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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 272

MRS. JESSE MILES, ET AL., PETITIONERS,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF TENNESSEE

PETITION FOR CERTIORARI FILED JULY 14, 1941.

CERTIORARI GRANTED NOVEMBER 10, 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 272

MRS. JESSE MILES, ET AL., PETITIONERS,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF TENNESSEE

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[fol. 1] [Caption omitted]

[fol. 2]

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE, APRIL TERM, 1938

No. 43282 R. D.

ILLINOIS CENTRAL RAILROAD COMPANY, Complainant,

vs.

JESSIE MILES, Administratrix of the Estate of Paul H. Miles, Deceased, Defendant

ORIGINAL BILL—Filed September 28, 1938

To the Chancellors of the Chancery Court of Shelby County, Tennessee:

Complainant respectfully shows to the court as follows:

Complainant is a corporation organized and existing under the laws of the State of Illinois and operates a line of railroad from Chicago in the State of Illinois through said State and through the States of Kentucky, Tennessee, Mississippi and other states. Complainant transacts its said interstate business in the City of Memphis, Shelby County, Tennessee, where it has offices and agents and where it is subject to suit in the court of Shelby County, Tennessee, in both the state courts and in the Federal Court, which courts have jurisdiction to grant to defendant the relief sought by her in her suit in St. Louis as hereinafter set out, and in which courts defendant can obtain a fair trial of the issues involved in said suit now pending in St. Louis.

Defendant Jessie Miles is a resident of Memphis, Shelby County, Tennessee, and has been for a long number of years. Defendant's intestate, Paul H. Miles, was at the [fol. 3] time of his death a resident of Memphis, Shelby County, Tennessee, and had been for a long number of years prior thereto. Defendant Jessie Miles was appointed by the Probate Court of Shelby County, Tennessee, as Administratrix of the Estate of said Paul H. Miles and has qualified and is acting in said capacity at the present time.

Complainant avers that the said Paul H. Miles was at the

time of his death on or about June 5, 1938, in the employ of complainant as car inspector in the yards of complainant at Memphis, Tennessee, known as the Nonconnah Yards, and as such car inspector was engaged in interstate commerce, and was so engaged at the time he received the injuries hereinafter set forth. Complainant at said time and place was engaged in interstate commerce and was at the time of the injuries to the said Paul H. Miles, and complainant is now so engaged.

Complainant avers that while the said Paul H. Miles was engaged in interstate commerce, and on June 5, 1938, while in the discharge of his duties as car inspector in complainant's yard at Memphis, Shelby County, Tennessee, he received injuries which caused his death.

All the witnesses to said accident reside in Memphis, Shelby County, Tennessee, and all said witnesses are engaged in the work of interstate transportation. Complainant avers that there are a large number of said witnesses for complainant, consisting of two switching crews of five men, each crew consisting of an engineer, fireman, engine foreman and two switchmen. In addition to said witnesses complainant will have as witnesses the superintendent of its line at Memphis, its trainmaster, its general car foreman, its yard master, its traveling engineer and at least two assistant yard masters; that to take all said witnesses away from their employment at Memphis and transport them to St. Louis where the suit is now pending as hereinafter alleged, will be a serious inconvenience to complainant and a serious burden upon and interference with inter-[fol. 4] state commerce; that the expense of taking all the witnesses from Memphis, Tennessee, to St. Louis, Missouri, where the suit is now pending, will be large and wholly unnecessary; that there is a possibility that some of the witnesses would not attend in person and complainant would thus lose the benefit of their personal appearance in court, since complainant cannot force said witnesses by the processes of the courts to attend said trial in St. Louis.

In addition complainant desires at the trial as witnesses the physicians and nurses who attended the deceased after the accident.

Complainant avers that its railroad tracks do not extend beyond East St. Louis, Illinois, and that it has no line of railroad extending into St. Louis, Missouri, or into Missouri at any other point; that all the agents and servants

of complainant who reside in St. Louis, Missouri, are engaged in interstate commerce, and that complainant does no business into or out of St. Louis, or into or out of the State of Missouri, except interstate commerce.

Complainant avers that notwithstanding the above and foregoing facts defendant has instituted a suit in the Circuit Court of the City of St. Louis in the State of Missouri against complainant, in which suit a recovery of $45,000.00 is sought against complainant on account of injuries inflected upon the said Paul H. Miles. Complainant makes as Exhibit "A" hereto a copy of the petition filed by Jessie Miles, Administratrix of the Estate of Paul H. Miles, in the Circuit Court of the City of St. Louis, State of Missouri, which exhibit need not be copied for the service of process. Complainant avers that unless the prosecution of said suit in the Circuit Court of the City of St. Louis is prevented by the injunctive process of this court the same will in due course be called for trial, and that at the trial thereof [fol. 5] complainant must appear with its witnesses as aforesaid in order to properly defend said suit. That to require complainant to transport its said witnesses from Memphis, Tennessee, to St. Louis, Missouri, will be unnecessary, expensive, and an interference with and burden on interstate commerce, and a great financial burden on this defendant; and to require all of said witnesses to be out of the service for a sufficient length of time to try said lawsuit in St. Louis will be a serious and unnecessary burden on complainant in the conduct of its aforesaid interstate business, and will greatly disrupt complainant's business.

Complainant avers that in the petition filed in the Circuit Court at St. Louis, Exhibit "A" hereto, the plaintiff herein does not allege the specific acts of negligence relied on but alleges only the general allegation that "as a direct and proximate result of negligence and carelessness of the defendant by and through its agents, servants and employees the said Paul H. Miles was caused to be run over and to sustain injuries of such severity that he died as a direct result thereof." Complainant avers that by said general allegation of negligence, without specifying the particular acts of negligence relied on, it is the evident purpose of the plaintiff in said suit to be able to prove any act of negligence she can and, therefore, it will be necessary for the defendant in said suit, complainant here, to have present

in court witnesses by whom it can disprove any particular act of negligence attempted to be proven by plaintiff at the trial; thus plaintiff has made it necessary by the allegations of her petition for this complainant to have present at the trial of that case even a larger number of witnesses than it otherwise would have present so as to anticipate any possible act of negligence which the plaintiff therein might attempt to prove.

[fol. 6] Complainant avers that it has available to it no process of any court, and especially no process of the Circuit Court of the City of St. Louis, State of Missouri, in which said suit is pending, whereby it could compel the attendance of the aforesaid witnesses at the trial of the case in St. Louis, and if the witnesses attended complainant would have to rely upon their voluntary attendance; and if they attended the trial of said cause it would necessitate the payment by complainant of not only their wages while they are away from work, but also their traveling expenses and other expenses for each time they are required to make the trip from Memphis, Tennessee, to St. Louis, Missouri. All of said witnesses would have to be boarded at great expense at hotels at and before they are needed in the City of St. Louis, and they would have to remain as witnesses away from Memphis at complainant's expense for many days, all of which would involve a tremendous expense to complainant, and for no good or sufficient reason.

Complainant further avers that the obligation rests upon it to manage the affairs of the railroad company efficiently and economically and it is within the power of the Interstate Commerce Commission to govern such management and to prevent a charge against expenditures which may be unreasonable or wasteful. Complainant avers that if the defendant if permitted to prosecute her said suit in the Circuit Court of the City of St. Louis, Missouri, it would cause, as hereinabove alleged, unreasonable, unnecessary and wasteful expenditures of money to the extent that the same would constitute a burden upon interstate commerce and unreasonably obstruct the same, not only in the amount of expense but by reason of the disturbance of complainant's normal operation of its yards in Memphis, Tennessee, and of its service generally.

[fol. 7] Complainant avers that this bill is not filed for the purpose of delay, but for the sole purpose of compelling defendant if she desires to sue complainant to bring her action

in Memphis, Shelby County, Tennessee, where all the witnesses are amenable to the process of the court, where all the witnesses reside and are subject to subpoena, to the end that no injustice or hardship be inflicted upon anyone, and that a hearing may be had without putting complainant to the unnecessary expense incident to a trial in the State of Missouri under such adverse circumstances and at such prohibitive expense as hereinabove stated.

PRAYER

In Consideration of the Premises, Complainant Prays:

(1) That process issue requiring defendant to answer this bill, but not under oath as her oath is expressly waived.

(2) That a temporary injunction issue against the defendant enjoining her from further prosecuting her said suit against complainant in the Circuit Court of the City of St. Louis, Missouri, and that at the hearing said injunction be made perpetual.

(3) That complainant have such other, further and general relief as to the court may seem right and proper.

This is the first application for an injunction or other extraordinary process in this cause.

Evans, Evans & Creson, Solicitors for Complainant.

[fol. 8] *Duly sworn to by E. D. Holcomb. Jurat omitted in printing.*

IN THE CHANCERY COURT OF SHELBY COUNTY

ORDER DIRECTING ISSUANCE OF INJUNCTION—September 28, 1938

To the Clerk & Master:

Issue temporary injunction prayed for herein upon the complainant giving bond conditioned as required by law in the sum of $1,000.00.

This 28th day of September, 1938.

L. D. Bejach, Chancellor.

[fol. 9] Bond on injunction for $1,000.00 omitted in printing:

[fol. 10] Cost Bond for $250.00 omitted in printing.

[fol. 11] IN THE CHANCERY COURT, SHELBY COUNTY

INJUNCTION—Issued September 28, 1938

To Jessie Miles, Administratrix of the estate of Paul H. Miles, deceased.

Agents and Attorneys—Greeting

Whereas Illinois Central Railroad Co. hath lately exhibited its sworn injunction Bill of Complaint in the Chancery Court of Shelby County against you, the said Jessie Miles, Administratrix of Estate of Paul H. Miles, deceased, as Defendant therein, and obtained from the Honorable L. D. Bejach, Judge, etc., an order that Writs of Injunction do issue according to the prayer of said Bill, We, therefore, in consideration of the premises, do strictly enjoin and command you, the said Jessie Miles, Administratrix of Estate of Paul H. Miles, dec'd, and all and every the persons before mentioned, and each and every of you, that you and every of you, do absolutely desist and refrain and enjoin the defendant from further prosecuting her suit; styled "Jessie Miles, Administratrix of the Estate of Paul H. Miles, deceased, vs. Illinois Central Railroad Co., a corp."; against complainant in the Circuit Court of the City of St. Louis, Missouri, until the further order of our said Court to the contrary. And this you shall in no wise omit, under the penalty prescribed by law.

Witness: Wm. M. Stanton, Clerk & Master of said Court, at office in the City of Memphis, this first Monday in April Term, 1938.

Wm. M. Stanton, Clerk & Master, by W. W. Foley, Dep. Clerk & Master.

[fol. 12] Came to hand 28th day of September, 1938, and executed September 28th, 1938, at 1:35 P. M. by reading this writ to Jessie Miles, Administratrix of the Estate of Paul H. Miles, Deceased.

Guy E. Joyner, Sheriff, by O. B. Lockman, D. S.

[fol. 13] IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

[Title omitted]

SUBPOENA TO ANSWER—Issued September 28, 1938

The State of Tennessee: To the Sheriff of Shelby County:

Summon: Jessie Miles, Administratrix of the Estate of Paul H. Miles, Deceased. If to be found in your county, to appear before the Chancery Court of Shelby County, at the Court House in Memphis, Tenn., on Monday, October 10, 1938, then and there to answer the Bill of Complaint of Illinois Central Railroad Co. a copy of which accompanies this writ. Herein fail not, and have you then and there this writ.

Witness: Wm. M. Stanton, Clerk & Master of said Court, at office in Memphis, this 28th day of September, 1938.

Wm. M. Stanton, Clerk & Master, by W. W. Foley, Deputy Clerk & Master.

Came to hand Sept. 28, 1938, and executed Sept. 28th, 1938, by reading this writ to Jessie Miles, Administratrix of the Estate of Paul H. Miles, deceased, and leaving copy of bill with her.

Guy E. Joyner, Sheriff, by O. B. Lockman.

[fol. 14] IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, SEPTEMBER TERM, 1938

Saturday, October 1st, 1938.

27154-C

JESSIE MILES, Administratrix of the Estate of Paul H. Miles, Deceased,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, a Corporation

DISMISSAL OF CAUSE—Filed October 1st, 1938

Now at this day comes the plaintiff by attorneys and dismisses her cause of action herein at the cost of the plaintiff, upon which let execution issue.

A True Copy from the Record.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, this 1st day of October, 1938.

H. Sam Priest, Clerk Circuit Court. (Seal.)

[fol. 15] In the Chancery Court of Shelby County, Tennessee

[Title omitted]

Order Granting Leave to File Amended and Supplemental Bill—February 20, 1939

In this cause Complainant is hereby allowed to file its amended and supplemental bill herein.

[fol. 16] In the Chancery Court of Shelby County, Tennessee

[Title omitted]

Amended and Supplemental Bill—Filed February 20, 1939

Complainant respectfully shows to the court that on or about September 28, 1938, it filed its original bill herein in which complainant alleged that it was a corporation operating a line of railroad in the States of Illinois, Kentucky, Tennessee, Mississippi, and other States; that it owns no tracks in the State of Missouri and that it runs no trains therein (except two or three trains per day on its line from Chicago); that it is engaged in interstate commerce and that it transacts its business in the city of Memphis, Shelby County, Tennessee, where it has offices and agents and where it is subject to suit in the courts of Shelby County, Tennessee, both State and Federal, which said courts had the jurisdiction to grant to the defendant the relief sought by her in her suit brought in the City of St. Louis, Missouri, and that she could obtain in the said courts of Shelby County a fair trial of the issues involved in her suit in St. Louis.

[fol. 17] It was further alleged that defendant Jessie Miles was a resident of Memphis, Shelby County, Tennessee, and had been for a long number of years, and that defendant's intestate, Paul H. Miles, was at the time of his death a resident of Memphis, Shelby County, Tennessee, and had been for a long number of years prior to his death; that Jessie Miles was appointed by the Probate Court of Shelby County, Tennessee, as Administratrix of the Estate of Paul H. Miles, and had qualified and was acting as such.

It was further alleged in said original bill that the said Paul H. Miles was at the time of his death, on or about June 5, 1938, in the employ of complainant in its yards in Memphis, Tennessee, and while so engaged he received injuries resulting in his death. It was further alleged in said original bill that all the witnesses to said accident resided in Memphis, Shelby County, Tennessee; that there were a large number of such witnesses who were in the employ of complainant; that to take said witnesses away from their employment in Memphis and transport them to St. Louis where the defendant's suit was then pending, would be a serious inconvenience to the complainant and a serious burden and interference with complainant's business. It was alleged in said original bill that it would be unjust and inequitable as well as unnecessary to require complainant to transport all of said witnesses to St. Louis for the purpose of testifying; that it was expensive so to do; that it might result in complainant not being able to produce all of its said witnesses, thereby causing a great injustice to complainant. It was further alleged in said original bill that notwithstanding the facts set out therein, defendant had instituted a suit in the Circuit Court of St. Louis to recover $45,000.00 damages on account of the [fol. 18] death of defendant's intestate; and there was attached to said original bill, Exhibit "A", a copy of the petition filed in said cause. Complainant refers to the original bill herein for all the allegations of fact set out therein.

Complainant in said original bill prayed that the defendant, Jessie Miles, Administratrix of the Estate of Paul H. Miles, Deceased, be enjoined from prosecuting her said suit in the City of St. Louis, and to this end that a temporary injunction be issued, and at the hearing a perpetual injunction be issued so enjoining her. Upon the filing of said bill this court issued a temporary injunction so restraining said

defendant from prosecuting her said suit in the City of St. Louis.

Complainant avers that notwithstanding said injunction which was duly issued and served upon the defendant Jessie Miles, Administratrix of the Estate of Paul H. Miles, Deceased, the said Jessie Miles set about the circumvent the injunction of this court, and notwithstanding said injunction, to have a suit brought and maintained in the City of St. Louis to recover for the death of the said Paul H. Miles even though in so doing she would be guilty of the very acts alleged in the original bill and would thereby work the same unnecessary and unjust and inequitable hardship on the complainant as is set forth in the original bill herein, and to prevent which this court issued its injunction.

Accordingly, said defendant dismissed her said suit in the Circuit Court of the City of St. Louis pending at the time the original bill herein was filed and also had herself discharged by the Probate Court of Shelby County, Tennessee, as the Administratrix of the Estate of Paul H. Miles, Deceased.

[fol. 19] In furtherance of her scheme and design to thus circumvent the injunction of this court and in her efforts to accomplish by indirection what she was enjoined from doing directly, the said Jessie Miles on January 17, 1939, executed a power of attorney to Robert A. Harris, appointing the said Robert A. Harris as "my true and lawful attorney for me and in my name to have appointed an administrator of the Estate of Paul Miles, in the City of St. Louis, State of Missouri, for the purpose of bringing a suit in the Circuit Court of the City of St. Louis, Missouri, in behalf of the Administrator against the I. C. Railroad Company for the benefit of the heirs of Paul Miles"; that being the very cause of action which the said Jessie Miles as Administratrix of the Estate of Paul H. Miles, had asserted in the Circuit Court of the City of St. Louis, which suit this court had enjoined her from prosecuting. By virtue of said power of attorney said Robert A. Harris caused Robert R. Adams to be appointed Administrator of the Estate of Paul Miles, deceased, by the Probate Court of the City of St. Louis for the purpose of instituting a suit in the name of Robert R. Adams as Administrator of the Estate of Paul H. Miles, against complainant in the City of St. Louis. Complainant attaches hereto a certified copy of said record

of the Probate Court of the City of St. Louis and makes said record a part hereof as Exhibit "A" hereto.

After said Jessie Miles had thus caused said Robert R. Adams to be appointed Administrator as aforesaid, and for the purposes aforesaid, the said Robert R. Adams as such Administrator instituted a suit in the Circuit Court of the [fol. 20] City of St. Louis against complainant to recover damages for the death of the said Paul Miles, the cause of action therein asserted being the same identical cause of action asserted by Jessie Miles as Administratrix of the Estate of Paul Miles in her suit brought in the Circuit Court of the City of St. Louis, which suit she was enjoined from prosecuting in the original cause. Complainant attaches hereto a copy of the proceedings in said cause of Robert R. Adams, Administrator of the Estate of Paul H. Miles, Deceased, vs. Illinois Central Railroad Company, making the same Exhibit "B" hereto and a part hereof.

Complainant avers that the cause of action for the wrongful death of the said Paul H. Miles, under the laws of Congress inures to the benefit of his widow and dependent children; that the widow of the said Paul H. Miles is Jessie Miles, the same identical person who was Administratrix of said estate by virtue of appointment by the Probate Court of Shelby County, and being the same identical person that was enjoined as such Administratrix by the orders of this court from prosecuting her suit in the Circuit Court of the City of St. Louis; that the children of the said Paul H. Miles are Paulien Miles and Florence Hicks, daughters of the said Paul H. Miles, all residents of Memphis, Shelby County, Tennessee, and that it is for their benefit that said suit is being prosecuted by the said Robert R. Adams as Administrator in the Circuit Court of the City of St. Louis.

Complainant avers that to permit the said Jessie Miles to thus prosecute in the name of another her said cause of action, all of which she is doing as aforesaid in an effort to escape the effect of the injunction issued by this court on the original bill herein, would amount to an approval by [fol. 21] this court of the acts and conduct of the said Jessie Miles to disregard the effect of said injunction and permit her to do the very acts and things which this court enjoined her from doing under the original bill herein. That the said Jessie Miles by causing her said cause of action to be prosecuted in the name of Robert R. Adams as Administrator instead of in her own name as Administratrix, is

attempting to inflict on complainant the same injustice, the same hardship, the same unnecessary expense and the same unnecessary burden that she was attempting the inflict upon complainant by the prosecution of her right of action in her own name, which right of action this court enjoined. Complainant is advised that the said Jessie Miles is not entitled to perpetrate this wrong or complainant by merely using the name of another in which to bring the suit instead of her own name, and thus in effect designedly and purposely accomplish what this court has enjoined her from doing.

PRAYER

In Consideration of the Premises, Complainant Prays:

(1) That process issue and be served on defendants Jessie Miles, Pauline Miles and Florence Hicks, requiring them, and each of them, to answer this bill, but not under oath as their oaths are expressly waived.

(2) That a temporary injunction issue against said defendants Jessie Miles, Pauline Miles and Florence Hicks, enjoining them, and each of them, from directly or indirectly doing or performing any act or acts in connection with or in furtherance of the cause Robert R. Adams, Administrator of the Estate of Paul H. Miles, Deceased, vs. Illinois Central Railroad Company, now pending in the Circuit Court of the City of St. Louis, State of Missouri, and from counseling, advising with or in any manner com-
[fol. 22] municating with the said Administrator or his attorney for the purpose of, or in any effort to prepare said cause for trial, and from attending said trial as a witness, and from giving any testimony either as a witness at the trial or by deposition, or otherwise, in furtherance of said litigation; also from in any wise furnishing to the said Administrator or his attorney in said cause, or anyone else, the name of witnesses or procuring or aiding in procuring the attendance of witnesses to give testimony either at the trial of said cause or by deposition or otherwise; also from expending any money in the preparation of said cause for trial or furnishing the said purpose, or from receiving any of the proceeds of any judgment that may be recovered in said cause, and that at the hearing the said temporary injunction be perpetual.

(3) That complainant have such other, further and general relief as it may be entitled to.

This is the first application for an injunction herein.

Evans, Evans & Creson, Solicitors for Complainant.

Duly sworn to by E. D. Holcomb. Jurat omitted in printing.

[fol. 23] In the Chancery Court of Shelby County

Order Directing Issuance of Injunction—February 20, 1939

To the Clerk & Master:

Issue temporary injunction prayed for herein upon the complainant giving bond conditioned as required by law in the sum of $1000.00.

This 20th day of February, 1939.

L. D. Bejach, Chancellor.

[fol. 24] Injunction Bond for $1000.00 omitted in printing.

[fol. 25] In the Chancery Court of Shelby County

Injunction on Amended and Supplemental Bill—Issued February 20, 1939

To Jessie Miles, Pauline Miles and Florence Hicks:

Atents and Attorneys—Greeting:

Whereas Illinois Central Railroad Company hath lately exhibited its A & S Bill of Complaint in the Chancery Court of Shelby County against you, the said Jessie Miles, Admrx & Ind., Pauline Miles and Florence Hicks as Defendant therein, and obtained from the Honorable L. D. Bejach, Judge, etc., an order that Writs of Injunction do issue according to the prayer of said Bill, We, therefore, in consideration of the premises, do strictly enjoin and command you, the said Jessie Miles, Pauline Miles and Florence Hicks and all and every the persons before mentioned, and each and every of you, that you and every of you, do absolutely desist and refrain from directly or indirectly doing

or performing any act or acts in connection with or in furtherance of the cause Robert R. Adams Admr of Estate of Paul H. Miles, Dec'd vs. Illinois Central Railroad Co., now pending in the Circuit Court of the City of St. Louis, State of Missouri, and from counseling, advising with or in any manner communicating with the said Administrator or his attorney for the purpose of, or in any effort to prepare said cause for trial, and from attending said trial as a witness, and from giving any testimony either as a witness at the trial or by deposition, or otherwise, in furtherance of said litigation; also from in anywise furnishing to the said Administrator or his attorney in said cause or anyone else, the names of witnesses or procuring the attendance of witnesses to give testimony either at the trial of said cause or by deposition or otherwise; also from expending any money in the preparation of said cause for [fol. 26] trial or furnishing the same to the said Administrator of his attorney, or anyone else, for said purpose, or from receiving any of the proceeds of any judgment that may be recovered in said cause, until the further order of our said Court to the contrary. And this you shall in no wise omit, under the penalty prescribed by law.

Witness: Wm. M. Stanton, Clerk & Master of said Court, at office in the City of Memphis, this first Monday in October Term, 1938. Wm. M. Stanton, Clerk & Master. By: D. C. Mitchell, Dep. Clerk & Master.

Came to hand Feb. 20th, 1939, and executed Feb. 28th, 1939, by reading this writ to Jessie Miles and Lizziebell Hicks which is correct name Florence Hicks, at 5:15 p. m., and further executed Feb. 21st, 1939, at 8:25 a. m. by reading this writ to Pauline Miles.

Guy E. Joyner, Sheriff. By: O. B. Lockman, D. S.

[fol. 27] IN THE CHANCERY COURT OF SHELBY COUNTY

SUBPOENA TO ANSWER AMENDED & SUPPLEMENTAL BILL—Issued February 20, 1939

The State of Tennessee

To the Sheriff of Shelby County:

Summon Jessie Miles, Pauline Miles and Florence L. Hicks (Lizziebell) if to be found in your county, to appear

before the Chancery Court of Shelby County, at the Court House in Memphis, Tenn., on Monday February 27th, 1939, then and there to answer the A & S Bill of Complaint of Illinois Central Railroad Co., a copy of which accompanies this writ. Herein fail not, and have you then and there this writ.

Witness: Wm. M. Stanton, Clerk & Master of said Court, at office in Memphis, this 20th day of Feb., 1939. Wm. M. Stanton, Clerk & Master. By: D. C. Mitchell, Deputy Clerk & Master.

Came to hand Feb. 20th, 1939, and executed Feb. 20, 1939, by reading this writ to Jessie Miles and Lizziebell Hicks, which is correct name of Florence Hicks and leaving copy of bill with Jessie Miles and further executed Feb. 21st, 1939, by reading this writ to Pauline Miles.

Guy E. Joyner, Sheriff. By: O. B. Lockman, D. S.

[fol. 28] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

PLEA IN ABATEMENT TO THE JURISDICTION OF THIS HONORABLE COURT—Filed March 6, 1939

Comes Mrs. Jessie Miles, not as administratrix because she has been discharged as such in the Probate Court of Shelby County, Tennessee, and is no longer administratrix, but as beneficiary under the Federal Employees' Liability Act, and having been made a party defendant by the amended and supplemental bill in this cause filed on the 17th day of February, 1939, and a temporary injunction having been issued by his Honor, Chancellor L. D. Bejach on the 20th day of February, 1939, as prayed for in the amended and supplemental bill and for plea in this cause says:

1

She is not an administratrix under the orders of any court, state or federal and is not serving as such nor qualified as such at the time of the service of the amended bill upon her which was February 20, 1939, and therefore, this bill cannot be maintained against her in this court.

[fol. 29] 2

Under the averments of the amended and supplemental bill filed in this cause, R. R. Adams is nominated, appointed and qualified as administrator of the estate of Paul H. Miles, deceased in St. Louis, Missouri, and this proceeding has not been served upon him and he is not made a party to this proceeding and no control of the said administrator can therefore be adjudicated in this cause as it now stands and therefore the court should proceed no further but dismiss this cause.

3

Because under the Federal Employees' Liability Act and the amendments the following provision exists as federal law which governs this cause of action:

"Under this act an action may be brought in a circuit court of the United States in the district of the resident of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this act shall be concurrent, with that of the courts of the several states, and no case arising under this act and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

This defendant says that she is advised, believes and therefore charges that her husband, Paul H. Miles, at the time that he was injured and from which injuries his death resulted, her said husband was engaged in interstate commerce and the whole cause of action arose by reason of and is governed by the Federal Employees' Liability Act, [fol. 30] (36 Stat. L. 291, Ch. 143, U. S. Comp. Stat. Supp. 1911, p. 1324), and that as the cause of action arose and came into existence by and through the acts of Congress and that Congress under the constitutional power under Art. 1, Sec. 8, par. 3, charges in the following words:

"The congress shall have power to regulate commerce with foreign nations and among the several states and with Indian tribes."

And therefore the federal statute that creates the right to sue for the wrongful death of Paul H. Miles also creates

the remedy, and as the remedy created by Congress provides that suit may be maintained in any state or federal court,

"in which the defendant shall be doing business at the time of commencing such action".

And therefore the right and remedy that is created by the acts of Congress this learned Court of Chancery and equity cannot and will not modify, repeal, destroy or deprive a litigant of such legislative rights created by legislative departments of the United States Government under rightful constitutional power. And therefore this Honorable Court should not embarrass, hamper, retard, modify, change or destroy or deprive and beneficiary of any rights created under said valid federal statute laws and this cause should be dismissed.

4

Because the declaration filed by R. R. Adams adver in the Circuit Court of the City of St. Louis, Missouri, charges solely and alone a cause of action under the Federal Employees' liability Act and is governed solely and exclusively by said act and the defendant will present a certified copy [fol. 31] of said declaration at or before the hearing of this plea in abatement, should issue by taken on same.

And therefore this cause of action in the Chancery Court should be dismissed.

5

Because the defendant in this cause, the Illinois Central Railroad Company on Friday, February 10, 1939, in the Circuit Court of the City of St. Louis, Missouri, appeared and presented its motion to the Court that it be granted twenty days from said date additional time to plead. A copy of the order of said court is hereto attached and marked Exhibit "A" to this plea in abatement and is certified under the acts of congress and the court is asked to give full faith and credit to said order of said court in said cause No. 30432-C. And said defendant in this chancery cause, No. 43282 R. D. having appeared in said Missouri court and asked for additional time in which to plead should not be permitted to further prosecute this cause, but this cause should be dismissed.

Because the Illinois Central Railroad Company is not a resident citizen of the State of Tennessee but is organized and existing under the laws of Illinois and domiciled in the State of Illinois and is therefore not a citizen or resident of the State of Tennessee.

Therefore your defendant pleads in abatement to the cause of action filed against her in this cause by the Illinois Central Railroad Company and asks that this proceeding be abated and dismissed and that she go hence with all of her costs expended.

Mrs. Jessie Miles.

Subscribed and sworn to before me this 6th day of March, 1939. H. S. Buchanan, Notary Public. My com. expires, Jan. 12, 1942. (Seal.)

W. G. Cavett, H. S. Buchanan
Solicitors for Defendant.

[fol. 32] In the Chancery Court of Shelby County

[Title omitted]

Demurrer of Mrs. Jessie Miles, Pauline Miles, Florence Hicks—Filed March 13, 1939

Come the defendants, Mrs. Jessie Miles and Pauline Miles and Florence Hicks, and demur to the whole bill pending against them in this cause and for grounds of demurrer state:

1

That under the amended and supplemental bill in this cause, the Illinois Central Railroad Company alleges under oath that it "operates in the states of Illinois, Kentucky, Tennessee, Mississippi and other states; that it owns no tracks in the State of Missouri and that it runs no trains therein except two or three trains per day on its line from Chicago; that it is engaged in interstate commerce", etc. And by the records filed as an exhibit to said bill and named Exhibit "A" which record is certified to under the Acts of Congress and which the Constitution of the United States

requires full faith and credit be given to said record, the sheriff of St. Louis, Missouri, made his return as follows:

[fol. 33] "Served this writ in the City of St. Louis on the within named defendant, the Illinois Central Railroad Company, a corporation, this 21st day of January, 1939, by delivering a copy of the writ and petition as furnished by the Clerk to F. Kelly, chief clerk of said defendant corporation, he being in said defendant's usual business office and in charge thereof and said defendant being a foreign corporation but doing business and having an office within the State of Missouri. The president or other chief officer of said defendant could not be found in St. Louis, Missouri, on the date of Service."

Therefore the averments in complainant's bill and the return of the sheriff which is not and cannot be attacked successfully in this suit shows that the defendant, Illinois Central Railroad Company, was doing business in St. Louis, Missouri, at the time that this law suit was filed by R. R. Adams, Administrator of the Estate of Paul H. Miles, deceased.

2.

Under the United States statute, U. S. C. A., Vol. 45, Sec. 56, it is specifically provided by the Act of Congress that action may be brought:

"Where defendant is doing business"

and is properly brought there is either a state or federal court under the Federal Employers Liability Act and Safety Appliance Act enacted by Congress.

3

Because the complainant of the Illinois Central Railroad Company shows on its face that the declaration filed by [fol. 34] R. R. Adams, Administrator, sought a recovery against the defendant solely upon the ground that the decedent was injured while he was engaged in interstate commerce and performing his duties as such and therefore the cause of action was created by and under the Acts of Congress and not under common law or state law and therefore a cause of action created by Acts of Congress under the provision of the Federal Constitution, Art. 1, Sec. 8, Sub.

sec. —, Congress is given the power to enact laws affecting "interstate commerce among the states" and Congress having so legislated, it would be inequitable, unconscientable and unlawful for this court of equity to take away from these defendants their constitutional rights of so prosecuting the suit.

4

Because the Illinois Central Railroad Company under and by virtue of entering its appearance in the cause pending there in the Circuit Court in St. Louis, Missouri, as shown by the certified record attached to the plea in abatement in this cause and part of this record shows that the Illinois Central Railroad Company waived its right to question venue and as it had asked affirmative relief of that court for twenty days additional time in which to plead and that it did not question the venue as its first act going into that court and this court of equity should not enjoin the prosecution of the suit in the Circuit Court of St. Louis where the said complainant in this cause who is defendant in that cause has affirmatively waived its right to question venue in that court.

5

Because the rights to which Mrs. Miles and her daughters are entitled to, are created and exist under and by virtue of constitutional statutes, Acts of Congress which Acts of Congress are in pursuance of and under the power granted [fol. 35] in the Constitution of the United States to Congress to so enact laws relating to interstate commerce among the states and the acts of Congress so created being Sec. 6 of the Federal Employers Liability Act as amended and as more fully set forth in 45 U. S. C. A. page 567, authorizing the filing of suit for damages under the Act "in any district in which defendant shall be doing business" at the time the action is commenced and it appearing that the plaintiff was doing business in St. Louis, Missouri, at the time that it was served with subpoena in that cause, though the Illinois Central Railroad may suffer extra expense in producing its witnesses or taking their testimony in defending said cause of action, it is to be presumed that Congress considered such probable inconvenience and expense that ranlroads engaged in interstate commerce would incur in such suits being brought in any district in which railroad may be doing business and the Act plainly gives jurisdic-

tion in such case and the federal courts construing this Act of Congress have held that an injunction cannot be maintained on such facts as alleged in this bill and therefore the state courts are bound or will be pleased to follow the construction placed on this act of Congress by the federal courts. Therefore, the injunction in this cause should be dissolved and this cause dismissed.

6

Because the complainant in this cause has not confessed judgment at law in its suit seeking an injunction and the injunction in this cause should be dissolved unless complainant, the Illinois Central Railroad Company, is required and compelled to confess judgment at law in the Circuit Court of St. Louis, Missouri, as same appears from the certified copy of the record in said court, certified under the Acts of Congress and being exhibits to the complainant's bill.

[fol. 36]

7

Because the complainant does not set forth any name of any particular witness that could not be produced at the trial or said witness testimony could not be taken by deposition as provided by statutes and there is no equity on the face of the bill in this cause and the injunction should therefore be dissolved and the bill dismissed.

W. G. Cavett, H. S. Buchanan, Solicitors for Defts.

March 13, 1939.

[fol. 37] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted].

ORDER OVERRULING PLEA IN ABATEMENT—Entered March 13, 1939

This cause came on this day to be heard on the plea in abatement filed by defendant herein and upon motion of the defendant to dispose of said plea; and after consideration of the same and argument of counsel, the Court is of the opinion that said plea in abatement is not sufficient.

It Is Therefore Ordered, Adjudged and Decreed by the Court that said plea in abatement be and the same is hereby

overruled. Defendant is hereby allowed 10 days in which to plead further herein.

Defendant duly excepts to action of Court.

O.K. Evans, Evans & Creson, Solicitors for Complainant.
O.K. W. G. Cavett, Solicitor for Defendant.

[fol. 38] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

MOTION TO REQUIRE COMPLAINANT TO CONFESS JUDGMENT AT LAW IN THE ST. LOUIS, MISSOURI, CIRCUIT COURT: AND TO REQUIRE THE COMPLAINANT TO MAKE ITS BILL MORE SPECIFIC AS TO THE JURISDICTION OF THE SAINT LOUIS COURT —Filed March 27, 1939

Came the defendants, Mrs. Jessie Miles et al. and upon the making of a motion by complainant for leave to amend its bill, the defendants moved the court then and there to require the complainant to confess judgment at law in the St. Louis, Missouri, Court as a condition precedent to further maintaining its injunction in this cause.

And the defendants further move the Court to require as a condition to granting the complainant permission to amend its bill and as a condition to maintaining its injunction in this cause pending an appeal, or the final determination of the questions involved, that the complainant aver under oath the facts as to whether or not it was doing business in St. Louis, Missouri, at the time of the commencement of the suit by R. R. Adams, Administrator, against it and which suit is mentioned in the amended and supplemental bill; and that the complainant be required to allege whether or not at the [fol. 39] time of the commencement of the suit in the Circuit Court of St. Louis, Missouri, by the administrator and at the time of the service of subpoena to answer or plead made upon the defendant as set forth in the Sheriff's return filed as a certified record in this cause;

(1) Whether or not, at that time, the said Illinois Central Railroad Company in St. Louis, Missouri, was maintaining a ticket office at 324 North Broadway Street in the City of St. Louis, Missouri, where it sold and delivered and carried on a ticket business by which it sold to customers

applying for railroad tickets from St. Louis, Missouri, to Chicago, Illinois, over its lines and to other points on its lines;

(2) And, whether or not it had freight and passenger offices at that time at 408 Pine Street in the City of St. Louis, Missouri, and at which offices it transacted its traffic business;

(3) And whether or not the said Illinois Central Railroad Company had a freight office at Ofallon Street where it handled its perishable freight and had yards at 1432 North Second Street, all located in St. Louis, Missouri;

(4) And whether or not the said Illinois Central Railroad Company operated passenger trains at least some of them from Chicago, Illinois, over its line into East St. Louis, Missouri, and from East St. Louis into the Union Station in St. Louis;

(5) And whether its engines pulled some of its trains into the said Union Station at St. Louis, Missouri;

(6) And if its engines did not carry on the business of pulling said passenger trains into the Union Station of St. Louis, Missouri, state whether or not said trains were pulled into the Union Station by the engine of the Terminal Railroad Company and that its passengers alighted from said [fol. 40] Illinois Central Railroad Company's trains and coaches and that they got on said Illinois Central Railroad Company's coaches and trains when leaving St. Louis in said Union Station;

(7) And whether or not the said Illinois Central Railroad Company owned one-sixteenth (1/16) interest in the Terminal Railroad Company, the engines of which pulled or propelled some of complainant's trains into St. Louis from East St. Louis terminal;

(8) And for the complainant to state whether or not it has and does pay taxes to the City of St. Louis, the County of St. Louis and the State of Missouri for carrying on its business for the year of 1938 in said state;

(9) And to state whether or not under the freight traffic schedules as well as in its freight schedules filed with the Interstate Commerce Commission, it has stated that it

maintains offices and does business in St. Louis, Missouri, for the whole year of 1938;

(10) And state whether or not in the City Directory and in the telephone books the said Illinois Central Railroad Company has by contract had its name and its offices and the telephone numbers inserted in the publications for the year of 1938, holding itself out to the public as doing business in the City of St. Louis and State of Missouri.

The defendants further move the Court to require and compel the complainant as a condition to allowing them to amend and file an amended bill in this cause at this late date after the demurrer has been overruled and an appeal granted by the Court from the bench; that the Court require the complainant to more specifically state under oath whether it was doing business in the city of St. Louis and the State of Missouri at the time of the commencement [fol. 41] of the suit which is sought to be enjoined in this cause and further state specifically whether or not it has many times been sued in St. Louis, Missouri, as doing business there and that it has admitted and confessed in the courts of St. Louis that it was so doing business during the whole year of 1938 and many years preceding said date.

W. G. Cavett, Attorney for Defendants.

[fol. 42] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

ORDER OVERRULING DEMURRER AND GRANTING APPEAL—
Entered March 28, 1939

This cause came on this day to be heard on the original bill filed herein, the amended and supplemental bill, the demurrer of the defendants thereto, and on the whole record herein, and after consideration of the same the court is of opinion that said demurrer is not well taken and should be overruled;

It Is Therefore Ordered, Adjudged and Decreed that the demurrer of the defendants to the original bill and the amended and supplemental bill be, and the same is overruled to the action of the court defendants duly except and the Court in its discretion grants to said defendants an

appeal to the Supreme Court sitting at Nashville from the action of the court in overruling said demurrer, and said appeal shall be perfected upon the defendants filing an appeal bond in the sum of $250.00 conditioned as prescribed by law or taking and filing the poor person's oath as provided by statute.

[fol. 43] Bond on appeal for $250.00 omitted in printing.

[fol. 44] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

STIPULATION AS TO EXHIBITS TO BE SENT UP WITH TRANSCRIPT TO SUPREME COURT—Filed April 5, 1939

In this cause it is stipulated by counsel for the Complainant and the Defendants, that in making up the record for the Supreme Court the Clerk may send up the Exhibits which are certified copies of records of the St. Louis Court with the transcript, and need not be copied.

W. G. Cavett, Sol. for Defendants. Thos. A. Evans, Sol. for Complainant.

April 5, 1939.

[fol. 45] IN CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

[Title omitted]

PROCEDENDO—Filed August 5, 1939

State of Tennessee

To the Honorable Judge of the Chancery Court of Shelby County, Holding and Presiding at Memphis, Tennessee:

Whereas, in our Supreme Court, at Nashville, at its December Term, 1938, it was adjudged and ordered in the cause I. C. R. R. Co. vs. Mrs. Jessie Miles, Tdmrx. et al. appealed to our said Court from said Chancery Court that the same be remanded thereto for further proceedings and final determination therein.

These are, therefore, To require you, the Court as aforesaid, that you proceed with the execution of this judgment of our said Supreme Court, by such further proceedings in your Court as shall effectuate the objects of this order to remand, and attain the ends of justice.

Witness, David S. Lansden, Clerk of our said Court, at office in Nashville, the first Monday of December, 1938.

David S. Lansden, Clerk. (Seal.)

[fol. 46] IN SUPREME COURT OF TENNESSEE

Shelby Equity

ILLINOIS CENTRAL RAILROAD CO.

vs.

MRS. JESSIE MILES, Admrx. et al.

Mod. Affirmed and Remanded

DECREE—Dec. 5, 1938

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Shelby County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that the decree of the Chancellor should be modified, as indicated by the Court in its opinion; the demurrer sustained with leave to defendants to rely upon same in their answer. The injunction will be continued until the hearing below. A certified copy of opinion will accompany the procedendo on the remand. The costs of Court below will abide the final disposition of this cause. The costs of this appeal will be paid by the I. C. R. R. Co. for which let fi fa issue.

[fol. 47] Clerk's Certificate to foregoing decree omitted in printing.

[fol. 48] IN SUPREME COURT OF TENNESSEE

Appeal from Chancery Court, Shelby County; L. D. Bejach, Chancellor

Suit by the Illinois Central Railroad Company against Mrs. Jessie Miles, Administratrix, and others to enjoin de-

fendants from prosecuting or aiding and abetting in the prosecution of an action brought in Missouri for the death of the named defendant's husband who was killed in Tennessee, wherein an injunction was granted as prayed. From a decree overruling the demurrer to the original and amended bill, defendants appeal.

Decree modified and demurrer overruled with leave to defendants to rely upon the same in their answer, and injunction continued until the hearing in trial court.

Evans, Evans & Creson, of Memphis, for appellant.

W. G. Cavett and H. S. Buchanan, both of Memphis, for appellees.

OPINION

GREEN, Chief Justice:

From a decree overruling the demurrer to the original and amended bill the chancellor permitted an appeal.

The original bill was filed by the Illinois Central Railroad Company, a common carrier with lines traversing several States and having an office, depot, yards, etc., at Memphis, to enjoin a suit brought by Mrs. Jessie Miles, Administratrix, of the estate of her husband, Paul H. Miles, in a circuit court at Saint Louis, Missouri. It appeared from the allegations of the bill that the deceased was accidently killed at Memphis while in the service of the complainant Railroad Company. That he was a resident of [fol. 49] Tennessee and that his wife qualified as administratrix in the probate court at Memphis. It was averred that the complainant's lines did not enter the State of Missouri, "that all the agents and servants of complainant who reside in Saint Louis, Missouri, are engaged in interstate commerce, and that complainant does no business into or out of Saint Louis, or into or out of the State of Missouri, except interstate commerce." It was further alleged that a defense of the suit brought by the administratrix as aforesaid would necessitate the transportation of many witnesses from Memphis to Saint Louis, that numbers of these witnesses were employees of complainant Railroad Company, that it could not compel the attendance of necessary witnesses at a trial in Saint Louis, and that the transportation of its employees to testify at Saint Louis would disrupt its service, and that a trial of this case at Saint Louis would put the complainant to great inconveni-

ence and expense and would be an undue burden on interstate commerce.

An injunction was issued on this bill as prayed and served on the defendant administratrix. She seems to have ignored the bill, making no appearance thereto in the chancery court at Memphis. Shortly thereafter, however, she dismissed her suit at Saint Louis, resigned her appointment as administratrix by the probate court of Shelby County, and executed a power of attorney, under which another administrator was appointed for her husband's estate by a probate court in Saint Louis. The Missouri administrator thereupon brought suit in a circuit court at Saint Louis upon the same cause of action.

Thereupon, the complainant Railroad Company filed an amended and supplemental bill, referring to and adopting the allegations of the original bill, stating things done in [fol. 50] the matter since the filing of the original bill, as outlined above, and making two daughters of the deceased parties defendant. It appeared from an exhibit to the bill that the Missouri administrator had named these two daughters, as well as the widow, as beneficiaries of the suit there. The prayer of the bill, to cut it short and state the substance, was for an injunction against the wife and daughters of the deceased to restrain them from aiding and abetting in the prosecution of the suit at Saint Louis brought by the Missouri administrator. An injunction was granted as prayed.

(1-3). To the bill and supplemental bill the defendants first interposed a plea in abatement. The chancellor held this plea insufficient, to which action defendants excepted. Defendants then interposed a demurrer, which the chancellor overruled as heretofore stated. The plea in abatement and the demurrer are quite similar in their contents. The points thus made will be discussed separately hereafter. It is insisted for complainant that the plea in abatement was really a demurrer, and having been overruled, the chancellor improperly considered a second demurrer based upon the same grounds. We think, however, that the defendants intended to challenge the jurisdiction of the court below to entertain the bill as well as to challenge the equity and merit of the bill. Objections of each character, in this particular case, no doubt might have been made by demurrer. Nevertheless the defendants were entitled to challenge the jurisdiction by plea in abatement and to chal-

lenge the equity of the bill by demurrer. We think that the defendants were not precluded from filing both a plea in abatement and a demurrer by the circumstance that the matters relied on by them went both to the jurisdiction of the court and to the merits of the bill. The chancellor, [fol. 51] having overruled the objection to his jurisdiction, was not precluded from considering the same matter as a defense to the merits.

The bill herein was fashioned after that filed in Louisville & N. R. Co. vs. Ragan, 172 Tenn. 593, 113 S. W. 2d 743. In that case this court approved the decree of the chancellor granting an injunction in favor of that Railroad Company against the maintenance of a suit by its employee Ragan at Saint Louis based upon an accident that happened at Nashville. It appeared that Ragan lived in Nashville and that it would put the Railroad to great inconvenience and expense and impair its service to transport witnesses, all of whom lived in Nashville, to Saint Louis to try the case. This court justified the injunction granted on the ground that it was an undue burden on interstate commerce and the conclusion reached was based on Davis vs. Farmers' Co-Operative Co., 262 U. S. 312, 43 S. Ct. 556, 67 L. ed. 996; Atchison, T. & S. F. Ry. Co. vs. Wells, 265 U. S. 101, 44 S. Ct. 469, 68 L. Ed. 928; and Michigan Central R. Co. vs. Mix, 278 U. S. 494, 49 S. Ct. 207, 73 L. ed. 470.

The case before us differs from Louisville & N. R. Co. vs. Ragan in this particular. The Missouri action there, as well as the Missouri action here, was brought under the Federal Employers' Liability Act, 45 U. S. C. A. Sec. 51, et seq. In this case, however, Sec. 56 of 45 U. S. C. A., providing for the venue for actions brought under the Federal Employers' Liability Act, is especially relied on. That section provides:

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action."

[fol. 52] Although an elaborate demurrer was filed in Louisville & N. R. Co. vs. Ragan, there was no reference to Sec. 56 either in brief or argument. The case was before this court on appeal from a decree overruling a demurrer and was decided here as though the complainant Railroad

Company was not doing business in Missouri when the action was commenced. Such being the plight of the record, the decision was supported by the authorities cited.

As the present case is presented, we are left in doubt as to whether the complainant here is doing business in Missouri within the contemplation of the Federal Employers' Liability Act.

In the case of Davis vs. Farmers' Co-operative Co., supra, a suit was brought in Minnesota against a carrier whose lines did not reach that State. The carrier, however, had an agent in Minnesota, service upon whom was good as to the carrier under the Minnesota Law. It appeared that the carrier would be put to great inconvenience and expense by defending a suit in that State, and the maintenance of such a suit in Minnesota was held to be an undue burden on interstate commerce, and the courts of Minnesota without authority to entertain same. Among other things, the Supreme Court said (262 U. S. 312, 43 S. Ct. 558, 67 L. ed. 996):

"But orderly effective administration of justice clearly does not require that a foreign carrier shall submit to a suit in a state in which the cause of action did not arise, in which the transaction giving rise to it was not entered upon, in which the carrier neither owns nor operates a railroad, and in which the plaintiff does not reside."

In Atchison, T. & S. F. Ry. Co. vs. Wells, supra, an effort was made to maintain a suit against an interstate carrier, without an agent in the particular State, by the seizure under garnishment of certain property of that carrier. The [fol. 53] courts of this State were held to be without jurisdiction for reasons similar to those which defeated jurisdiction in the Davis case.

The Davis case was not brought under the Federal Employers' Liability Act but in Michigan Central R. Co. vs. Mix, supra, the suit was under that statute. It was a suit by the widow and administratrix of an employee of the Michigan Central R. Co., whose death resulted from an accident in Michigan where he at that time lived. The widow removed to Saint Louis after her husband's death and qualified as administratrix in Missouri. The Railroad Company had no lines in Missouri, only a soliciting agent, and service was had on him. Facts substantially identical

to the facts in the Davis case showing the hardship that would be entailed upon the Railroad Company by trying this case in Missouri were developed and the Missouri Courts were held to be without jurisdiction for a like reason as in the Davis case.

In Denver & R. G. W. R. Co. vs. Terte, 284 U. S. 284, 52 S. Ct. 152, 76 L. ed. 295, a suit was brought in Missouri against two railroad companies under the Federal Employers' Liability Act, 45 U. S. C. A., Sec. 51 et seq., for injuries said to have resulted from their joint negligence in Colorado. One of the railroad companies neither owned nor operated a line in Missouri. It did, however, own and use some property located there. It maintained one or more offices in the State and employed agents who solicited traffic. These agents engaged in transactions incident to the procurement, delivery and record of such traffic. It was not licensed to do business in Missouri. As to this Railroad Company, following the Davis case, it was held that the suit was a serious burden upon interstate commerce and its maintenance would not be permitted in Missouri.

[fol. 54] The other railroad company owned and operated lines in Missouri, was licensed to do business in that State, had offices and agents there, and these agents transacted the business ordinarily connected with the operation of a carrier by railroad. As to this Railroad Company the suit was held properly brought in the State of Missouri, or rather it was held that the Supreme Court of Missouri "committed no error of which we can take notice by refusing to prohibit further prosecution of the action against that Company."

In Hoffman, Judge, vs. Missouri ex rel, Foraker, 274 U. S. 21, 47 S. Ct. 485, 71 L. ed. 905, it was held that an action under the Federal Employers' Liability Act, 45 U. S. C. A. Sec. 51, et seq., for death by negligence might be maintained against a railroad in the State of its incorporation, where it owns part of its lines, operated intrastate as well as interstate commerce, in a county where it has an agent and usual place of business, though this be not in the State where the cause of action arose.

St. Louis, B. & M. Ry. vs. Taylor, 266 U. S. 200, 45 S. Ct. 47, 69 L. ed. 247; International Milling Co. vs. Columbia Co., 292 U. S. 511, 54 S. Ct. 797, 78 L. ed. 1396; and McKnett vs. St. Louis & S. F. Ry. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. ed. 1227, are relied on by the defendants. These cases,

however, do not involve suits brought under the Federal Employers' Liability Act and throw no light upon the question as to whether the complainant herein is doing business in Missouri within the contemplation of that statute.

(4, 5) What the complainant does and the nature of its operations and activities in the State of Missouri is left doubtful upon the pleadings before us. Sufficient facts do not appear to enable us to determine whether it is doing [fol. 55] business in the State of Missouri within the sense of the Federal statute. An effort is made by the defendants to have us take judicial notice of certain things which it is urged show that complainant is doing business in Missouri so as to make it amenable to the suit brought there by the administrator of the deceased. We think, however, such matters must be proven. The case is before us on the bills and the demurrer. We do not find sufficient facts stated in the bills to justify the conclusion that the complainant is doing business in Missouri within the meaning of the Federal Employers' Liability Act, nor do we find such facts in any of the exhibits to those pleadings. We can not take judicial notice of decisions of the Supreme Court of Missouri on appeal, such decisions not having been proven in the court below (Watkins vs. Watkins, 160 Tenn. 1, 22 S. W. (2d) 1), even if we could take judicial notice of facts said to be stated in those decisions.

(6) For the reasons thus indicated, we are not willing to dispose of this case on demurrer but prefer an answer developing all facts as to the nature of the complainant's business in Missouri.

If it develops that complainant is doing business within the State of Missouri in the sense of the Federal Employers' Liability Act, we are hesitant to award the injunction herein sought, although we do not foreclose that question until all the facts are before us.

We find no decision of the Supreme Court of the United States ruling that a State court is without authority to enjoin a suit by one of its citizens in a foreign State, the facts justifying such relief, even though that suit be brought under the Federal Employers' Liability Act.

[fol. 56] That Court denied a petition for certiorari in Chesapeake & Ohio R. Co. vs. Vigor, 6 Cir., 90 F. 2d 7; Id. 302 U. S. 705, 58 S. Ct. 25, 82 L. Ed. 545. In that case the Federal District Court had declined to enjoin the prose-

cution of a suit under the Federal statute in a district foreign to that in which the accident happened. The Circuit Court of Appeals affirmed the District Judge. On the other hand, in Ex parte Crandall, 7 Cir., 53 F. 2d 969; Crandall vs. Habbe, 285 U. S. 540, 52 S. Ct. 312, 76 L. Ed. 933, the Court denied a petition for certiorari also. In the last named case habeas corpus proceedings had been brought in the Federal Court to free relator from contempt proceedings instituted in an Indiana court for violation of an injunction by that court against her prosecution of a suit under the Federal Employers' Liability Act in Missouri. The District Judge refused to interfere with the contempt proceedings and his action was affirmed in the Court of Appeals.

The Supreme Court may have considered that neither of these cases involved matters of sufficient importance to warrant its taking jurisdiction or oth considerations may have influenced its denial of the writs of certiorari.

Decisions in the State courts as to the propriety of such injunctions are not in harmony. Injunctions have been issued in Reed's Adm'x vs. Illinois Central R. Co., 182 Ky. 455, 206 S. W. 794; In re Spoo's Estate, 191 Iowa 1134, 183 N. W. 580; Alspaugh vs. New York, C. & St. L. R. Co., 98 Ind. App. 280, 188 N. E. 869; Cleveland, C., C. & St. L. R. Co. vs. Shelly, 96 Ind. App. 273, 170 N. E. 328, and other Indiana cases cited and apparently approved in State of Missouri ex rel, N. Y. C. & St. L. R. Co. vs. Nortoni, Circuit Judge, 331 Mo. 764, 55 S. W. 2d 272, 85 A. L. R. 1345, and [fol. 57] Bryant vs. Atlantic Coast Line R. Co., 2 Cir., 92 F. 2d 569. Such injunctions have been refused in Southern Pacific Co. vs. Baum, 39 N. M. 22, 38 P. 2d 1106; Lancaster, Receiver, vs. Dunn, Admr., 153 La. 15, 95 S. 385, and such relief discountenanced in other cases where the precise question did not arise. See cases collected in Notes. 85 A. L. R. 1351, and 113 A. L. R. 1444.

(7) With Sec. 56, 45 U. S. C. A., out of the way, a suit like the one here sought to be enjoined in a foreign jurisdiction is oppres-ive, a burden on commerce, and justifies relief by injunction. When, however, Sec. 56 is interposed and we are asked to relieve a carrier of a burden sanctioned by Congress, the question requires more consideration. This question is reserved.

The decree of the chancellor is modified, the demurrer is overruled with leave to defendants to rely upon the same in their answer. The injunction will be continued until the hearing below. Some other points made by counsel have been considered but do not seem to require discussion.

(8) It might be added that inasmuch as the chancellor took no steps toward holding the defendants in contempt for disregard of his injunction, but on the contrary granted them an appeal, this court is not called upon of its own motion to proceed in that matter.

Green, C. J.

[fol. 58] Clerk's Certificate to foregoing opinion omitted in printing.

[fol. 59] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

ORDER TO MAKE BILL MORE SPECIFIC—Entered September 21, 1939

This cause came on this day to be heard on the written motion of the defendant to require complainant to make more specific allegations as set out in said motion, and after hearing of the motion the Court is of the opinion that complainant should allege in its bill whether or not there is any law in Missouri with respect to foreign corporations qualifying to do business in the State of Missouri, and if such law exists, allege whether or not complainant complied therewith.

It is Therefore Ordered, Adjudged and Decreed that complainant be and it is hereby required to amend its bill and make said allegations, and complainant shall have 10 days from this date in which to comply with this order.

On application of complainant, complainant is hereby permitted to amend its original and supplemental bill by inserting therein the following allegations:

[fol. 60] "Complainant avers that the statutes of Missouri, being Section 4598 of the Code, require that foreign corporations before doing business in the State of Missouri shall comply with the provisions of said statutes requiring, among other things, that such foreign corporations file with

the Secretary of State a certified copy of its charter, and also file various other statements and documents and do various and sundry things required by said statutes, but complainant avers that while it is organized under the laws of Illinois it has never complied with said statutes or attempted to do so because it never conceived that it was doing business in the State of Missouri.

It is Therefore Ordered, Adjudged and Decreed that the original and supplemental bill herein are amended accordingly. Said amendment shall be sworn to and filed in this cause.

To the action of the Court in overruling the other grounds of said motion, defendants duly except.

[fol. 61] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

AMENDMENT TO ORIGINAL AND SUPPLEMENTAL BILL—Filed September 25, 1939

Permission of the court having been had, complainant files the following amendment to the original and supplemental bill by inserting therein the following allegations:

"Complainant avers that the statutes of Missouri being Section 4598 of the Code, require that foreign corporations before doing business in the State of Missouri shall comply with the provisions of said statutes requiring, among other things, that such foreign corporations file with the Secretary of State a certified copy of its charter, and also file various other statements and documents and do various and sundry things required by said statutes, but complainant avers that while it is organized under the laws of Illinois it has never complied with said statutes or attempted to do so because it never conceived that it was doing business in the State of Missouri."

Evans, Evans & Creson, Solicitors for Complainant.

[fol. 62] *Duly sworn to by E. D. Holcomb. Jurat omitted in printing.*

[fol. 63] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

ANSWER OF DEFENDANTS—Filed September 27, 1939

Comes the defendants, Mrs. Jessie Miles, individually, and her two daughters, Pauline Miles and Florence Miles Hicks, and still reserving all their rights under a demurrer heretofore filed and overruled in the trial court but which demurrer was, by the Supreme Court of Tennessee, held that these defendants might rely upon same in their answer and in so relying on said demurrer and for answers to such parts of the original and amended bills filed by complainant in this cause say:

I

To that part of the original bill, if same can be considered against these parties, which charges on page three that the railroad does not own any tracks beyond East St. Louis, Illinois, and that it has no line of railroads extending into St. Louis, Mo., or into Mo. at any other point.

[fol. 64] These defendants are unable to answer this because they are not advised whether or not the said complainant owns any line of railroad into Mo. or not; but regardless of whether this is a fact or not, this is not the test and is not necessary in determining whether or not said railroad company was doing business in St. Louis, Mo., at the time it was sued.

II

These defendants further say in answer to the averment in the original bill on page 3:

That all the agents and servants of complainant who reside in St. Louis, Mo., are engaged in interstate commerce, and that complainant does business into or out of St. Louis, or into and out of St. Louis except "inter-state commerce"; and answering said averment, if these defendants should answer same, they deny the truthfulness of this averment; they deny the averment that said complainant was not doing both an interstate and intrastate business at the time it was sued in the Circuit Court of St. Louis, Mo.

These defendants say that said Illinois Central Railroad Co. was, at the time it was sued, present in the State of Illinois and was there carrying on both interstate and intrastate business.

III

For further answer these defendants say that in Time Table No. 83, issued January 7, 1939, by the said Illinois Central Railroad Co., on page 22, has held itself out to the interstate commerce commission and to people in general throughout the United States that:

The Illinois Central Systems Network of lines serves 14 states of the Middle West and South; that it defines its [fol. 65] lines of railroads on pages 31, 32, 33 and 34 it shows its line of railroad and it is engaged in business in the city of St. Louis, Mo.

On pages 5 and 6 of its said publication it shows the following trains which it was operating in and out of St. Louis, Mo., regardless of ownership of the tracks on which said trains were operating:

1. South-bound, No. 201-1, St. Louis to New Orleans.
2. Panama Limited, No. 205-5, St. Louis to New Orleans.
3. The Floridan (daily), No. 15-7, St. Louis to Miami, Fla.
4. The Seminole (daily), No. 15-9, St. Louis to Jacksonville, Fla.
5. The Chickasaw (daily), No. 15, St. Louis to Memphis, Tenn.
6. The Diamond, No. 17, Chicago to St. Louis.
7. North-bound Creole, No. 2-202, New Orleans to St. Louis.
8. Panama Limited, No. 6-16, New Orleans to St. Louis.
9. The Chickasaw (daily), No. 16, Memphis, Tenn. to St. Louis.
10. The Floridan, No. 8-16, Miami to St. Louis.
11. The Seminole (daily), No. 10-16, Jacksonville, Fla. to St. Louis.
12. The Diamond (daily), No. 18, St. Louis to Chicago.
13. The Daylight (daily), No. —, St. Louis to Chicago.
14. The Green Diamond, No. 50, St. Louis to Chicago.

The schedule, as appears on said publication which is filed as Exhibit A to this answer and made a part hereof as a document published and circulated and admitted and

confessed by said Illinois Central Railroad Co. to the Inter-State Commerce Commission and to people generally throughout the United States that the said Illinois Central Railroad Co. was doing business in the various places and states indicated and especially in St. Louis Mo., at that particular time;

[fol. 66] EXHIBIT—TIME TABLE

That it had a ticket office at St. Louis, Mo., and also one at 18th and Market Streets in St. Louis, Mo., at which it sold and delivered tickets over its trains from St. Louis, Mo., and from other points to St. Louis, Mo.; and that all of the said trains above referred to of said Illinois Central Railroad Co. run into the Union Station in St. Louis, Mo., during the time prior to, at the time the suit was instituted, and since said date.

Defendants say that in said publication on page 62 thereof the defendant admitted and confessed that it maintained an office at 408 Pine St. in the city of St. Louis, Mo., and offices at which it carried on its business; that its telephone was Chestnut 9400; that its E. W. Betts was District Agent in said offices and S. L. Springer was Assistant General Freight Agent in said offices at the time that this suit was instituted by said Illinois Central Railroad Co. against these defendants and that the time that the Illinois Central Railroad Co. was sued as alleged in the original and as alleged in its amended bill on page 60 of said publication the defendant, Illinois Central Railroad Co., admitted and confessed that A. L. Wilson was its General Freight Agent at St. Louis and that G. R. Kimbal was its General Passenger Agent at St. Louis, Mo., and that J. L. Shephard was Assistant Manager at St. Louis, Mo.

The various time tables of the various trains set forth above as shown in said publication and the said Illinois Central Railroad Co. sold tickets to various persons to and from St. Louis Mo., over its said trains and it carried on its business by and through the operation of its trains into and out of St. Louis, Mo., at the time that it was sued in the Circuit Court of St. Louis, Mo.

[fol. 67] IV

For further answer these defendants say that in the hereinbelow reported cases the Illinois Central Railroad

Co. was sued and suit maintained in the courts of Missouri extending over a period of time of some forty years in the following cases, towit:

(1) I. C. R. R. vs. Crain, 335 No. 658, 73 S. W. (2d) 786, cert. den. Oct. 28, 1934, 293 U. S. 607, 55 Sup. Ct. 123, 79 L. ed. 698;
(2) I. C. R. R. vs. Hardin, 334 Mo. 1169, 70 S. W. (2d) 1075, cert. den. Oct. 8, 1934, 293 U. S. 574, 55 Sup. Ct. 86, 79 L. ed. 672;
(3) I. C. R. R. vs. Poe, 339 Mo. 1025, 89 S. W. (2d) 82; (rev.)
(4) I. C. R. R. vs. Poe, 335 Mo. 507, 73 S. W. (2d) 779;
(5) I. C. R. R. vs. Rummels, Mo. App. 15 S. W. (2d) 363;
(6) I. C. R. R. vs. Connelly, 133 Mo. App. 310, 113 S. W. 233;
(7) I. C. R. R. vs. Connelly, 169 Mo. App. 272, 153 S. W. 79;
(8) I. C. R. R. vs. Connelly, 183 Mo. App. 408, 166 S. W. 1077;
(9) I. C. R. R. vs. Connole, Mo. App., 21 S. W. (2d) 907;
(10) I. C. R. R. vs. Evans, 289 Mo. 493, 233 S. W. 307;
(11) I. C. R. R. vs. Cess Com. Co., 193 Mo. App. 677, 186 S. W. 1136;
(12) I. C. R. R. vs. Ginnochio, 153 Mo. App. 163, 134 S. W. 192;
[fol. 68] (13) I. C. R. R. vs. Ginnochio, 264 Mo. 516, 175 S. W. 196;
(14) I. C. R. R. vs. Hatan, 335 Mo. 1186, 76 S. W. (2d) 127;
(15) I. C. R. R. vs. Henry, 319 Mo. 432, 3 S. W. (2d) 1004;
(16) I. C. R. R. vs. Hurley, 221 Mo. App. 478, 282 S. W. 97;
(17) I. C. R. R. vs. Krallman, 209 Mo. App. 266, 235 S. W. 830;
(18) I. C. R. R. vs. Lewis, 319 Mo. 233, 3 S. W. (2d) 371;
(19) I. C. R. R. vs. Lewis, Mo., 50 S. W. (2d) 122;
(20) I. C. R. R. vs. Mo. Ill. Coal Co., 134 Mo. App. 405, 114 S. W. 574:

(21) I. C. R. R. vs. Harrison Tent & Awning Co., 190 Mo. App. 67, 175 S. W. 220;
(22) I. C. R. R. vs. N. K. Fairbank Co., 167 Mo. App. 286, 149 S. W. 1154;
(23) I. C. R. R. vs. R. W. Gess Cam. Co., 193 Mo. App. 677, 186 S. W. 1136;
(24) I. C. R. R. vs. Saba, 337 Mo. 105, 89 S. W. (2d) 429;
(25) I. C. R. R. vs. Saffa, 218 Mo. App. 502, 279 S. W. 223;
(26) I. C. R. R. vs. Siegel, 186 Mo. App. 645, 172 S. W. 420;
(27) I. C. R. R. vs. Teitsort, 322 Mo. 640, 15 S. W. (2d) 779;
(28) I. C. R. R. vs. Udell, 13 Mo. App. 254.

[fol. 69] In the reported case styled Rummels vs. I. C. R. R. Mo. App., 15 S. W. (2d) 263, judgments for plaintiff in the Circuit Court of St. Louis, Mo., and which was affirmed by the Supreme Court the following facts were stated by the court and were true as follows:

"The scene was on Main and Brooklyn Streets in the city of St. Louis, Mo."

This was a suit in which one of the I. C. R. R. trains struck a truck in which Rummels was riding in the city of St. Louis, Mo., and this is an adjudication by the highest court in Missouri that the said I. C. R. R. was doing business in St. Louis, Mo., and this defendant pleads this and the above styled cause and records as adjudicating the fact that the said I. C. R. R. was engaged in both interstate and intrastate business in St. Louis, Mo., and asks that full faith and credit be given to these records of said courts of Missouri.

V

These defendants say that in the amended bill filed the 20th of February, 1939, in this cause by the I. C. R. R. it is averred as follows:

"That the I. C. R. R. was a corporation operating the line of railroads in the states of Illinois, Kentucky, Tennessee, Mississippi and other states; that it owns no tracks in the state of Missouri and that it runs no trains therein

(except two or three trains a day to and from Chicago), that it is engaged in interstate commerce and that it transacts its business in Memphis, Tenn., etc."

These defendants deny these facts set forth by said complainant and when the complainant says that it runs no [fol. 70] trains except a few trains a day to and from Chicago, it was recklessly and carelessly making such statements or willfully misrepresenting and stating things that were not facts because on its schedule it is operating fourteen trains to and from St. Louis and why the defendant, officered by intelligent men and represented by reputable attorneys, would make such statements under oath in a court of chancery is difficult to understand; and the complainant did not come into this Chancery Court with clean hands but came in with misrepresentations and fraud and should be repelled.

VI

At the time of filing of the original and amended bills in this cause these defendants deny all direct and inferential averments that the I. C. R. R. was not doing business in St. Louis, Mo. But on the other hand, the said I. C. R. R. at that time maintained a city ticket office at 324 North Broadway in the City of St. Louis, Mo.; it maintained a freight an O'Fallon perishable freight yards at 1432 North Second St. in the City of St. Louis, Mo. Said offices were officered by various and numerous employees who performed various and numerous services for the I. C. R. R. Said company solicited and accepted passenger- and freight at its various offices in the city of St. Louis and transported and transmitted passengers and freight on its various trains and received passengers and freight on its various trains in the city of St. Louis, Mo. Not only did it sell tickets and issue freight way bills and receive freight at its St. Louis offices but it received freight and express at its various St. Louis offices.

VII

As to the averment by the complainant, I. C. R. R., that it was not a licensed concern in the State of Missouri, these defendants cannot or are not in a position to admit or deny [fol. 71] and they, therefore, deny this to be a fact. But whether or not the said I. C. R. R. has evaded the securing of a license to do business these defendants do not know.

However, these defendants say that a permit was issued to the said I. C. R. R. to do business in the state of Missouri and it exercised said permit and all its rights and privileges thereunder. The same has a license to do business and to perform all the functions of doing business in St. Louis, Missouri.

The said complainant, I. C. R. R., filed with the Inter-State Commerce Commission all its traffic rates to and from St. Louis, Mo., and these defendants demand that the said I. C. R. R. produce a copy of said traffic rates which it filed pursuant to law with the Interstate Commerce Commission and which shows that the I. C. R. R. not only intended to do business but did carry on a business and fixed traffic rates in St. Louis, Mo., at the time it filed the original and amended bills in this cause. The defendants further say that they are advised and believe that the Terminal Railroad and the Union Station and the bridge across the Mississippi River from St. Louis, Mo., to East St. Louis, Ill. is owned by certain railroads and the I. C. R. R. owns 1/16 interest in same and did so own said interest at the time it filed the original and amended bills in this cause.

VIII

And for further answer to all parts and such parts that of the original and amended bills filed by the I. C. R. R., complainant in this cause, these defendants say that whether the said I. C. R. R. was doing an intrastate business or solely or exclusively an interstate business, the said railroad was amenable to process to enforce a personal liability [fol. 72] in the absence of consent on its part to be followed because it was doing business within the State of Missouri then and there in such manner and to such an extent as to warrant the inference and the conclusion that it was present there in the State of Missouri and subject to suit both under the statutory laws of Missouri and the services had upon the I. C. R. R. in said suit, R. R. Adams, Admr. vs. I. C. R. R. was valid process.

But regardless of whether it is valid process or not, this proceeding cannot investigate the validity of the process in that proceeding by different parties and in a different state.

At the time that the said I. C. R. R. was sued and at the time that it filed its original bill in this cause and its amended bill it had one or more offices and numerous agents of its own in the city of St. Louis, Mo. It was maintaining

its offices there, it was selling tickets and issuing freight way-bills, and receiving passengers and receiving freight from its connecting lines and was suable in St. Louis, Mo., under the constitution and the laws.

IX

And for further and additional answer these defendants say that the I. C. R. R. Co., even if engaged in interstate commerce only in the state of Missouri, which of course has been denied in the above paragraphs of this answer, still it was suable there because it was carrying on interstate commerce and it was provided in the Act of Congress (The Federal Employers Liability Act) that suit could be maintained by an injured employee engaged in interstate commerce wherever the defendant was found doing business and the I. C. R. R. was found doing business at the time it was sued in St. Louis, Mo.

[fol. 73] X

Under Art. I, Section 8, sub-section 4 of the Constitution of the United States and under Art. 6 of the Constitution of the United States, it is provided:

"This constitution, and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land; and the judges in every state shall be bound thereby by anything in the constitution or laws in any state notwithstanding."

and as Congress had the power and right to place any and all such burdens on interstate commerce that it saw fit to do, Congress had the power to regulate interstate commerce and in creating the Federal Employers Liability Act it saw fit to place incidental burdens upon interstate commerce by the jurisdictional statutes in said act *have* therefore, even if the Chancery Courts of Tenn. have more wisdom than Congress they still have no more power and certainly no more right to exercise its wisdom in the place of the wisdom expressed by Congress in its own acts. Congress evidently had in mind the inconvenience that would result in almost, if not quite, every case from prosecuting the suit elsewhere than at the place where the cause of action arose yet it provided this very right and remedy to the injured employee or his administrator.

It being the duty of the Court of Chancery or Equity in this cause to follow the law and not destroy the statute law enacted by Congress and the rights of the states being defined and established by statutory law enacted by Congress under its power to regulate interstate commerce Equity has no power to change or unsettle its rights or that situation but in such an instance Equity should follow the law and not attempt to destroy the law enacted by Congress giving the injured employee the right and the remedy to maintain suit [fol. 74] against the defendant wherever the defendant was found doing business, in St. Louis, Mo., at the time that suit was instituted there by R. R. Adams, Admr. vs. I. C. R. R.

XI

The defendants further say that the manifest purpose of the act of Congress giving the injured employee the right to sue the railroad that caused his injuries in any state where it was found doing business was to yield to suitors under it the choice of tribunals and not the choice to the railroad company.

XII

Under the Federal Employee's Liability Act as amended on the 5th of April, 1910, which appears as 45 U. S. C. A. 56, it is provided under this act an action may be brought in the district:

"In which the defendant may be doing business at the time of commencing of such action"; and as the Federal Courts in construing this particular act of Congress as it was the duty of said Federal Courts to construe same, have held in the cases of Southern R. R. Co. vs. Cochran, Judge, 56 Fed. (2d) 1019; C. & O. R. R. vs. Vigor, Admr., 17 Federal Supp. 602, Aff. 90 Fed. (2d) 7, certi. den. by Sup. Ct. of U. S., 58 Sup. Ct. 25, 302 U. S. 705, 82 L. ed. 545; Schendal vs. McGee, District Judge, 300 Fed. 278; Norris vs. I. C. R. R., 18 Fed. (2d) 584; Tapp vs. B. & O. R. R. 283 Fed. 655; Connelly vs. Central R. R. Co. of N. J., 239 Fed. 632; Hood vs. Del. & H. R. Co., 36 Fed. (2d) 2[illegible]5."

have held that it is not inequitable for an injured employee or his administrator to prosecute and maintain a lawsuit for [fol. 75] injuries arising under said act in any court, state

or federal, where the defendant is found doing business at the commencement of such suit and under adjudication of the Supreme Court of this state in Howard vs. N. C. & St. L., 132 Tenn. 25, 179 S. W. 382, the Federal Employees Liability Act;

"That act is as much a law of each state as if made by the legislature of all the states".

And therefore the state courts and especially this court should follow the construction of said federal statutes made by said federal courts.

In the case of Anderson vs. L. & N. R. R., 210 Federal 682, the Court of Appeals of the Sixth Circuit, our circuit, construes this Federal Employees' Liability Act as held:

"No privity exists between a domiciliary and ancillary administrator".

and action under the Federal Employees' Liability Act "is not local but transitory". Therefore, it is the duty and should be the pleasure of this court to follow the construction of the Federal Employees' Liability Act made by Federal Courts and to do so this court should dissolve the injunction issued in this cause, dismiss the bill, and award the defendants damage.

XIII

In answer to that part of the amended bill which charges, directly or by inference, a fraud in the fact that Mrs. Jessie Miles dismissed her lawsuit in Circuit Court of St. Louis, Mo., resigned her administratorship and was released of same in the Probate Court of Shelby County, Tenn., and then signed a power of attorney to appoint an administrator by the courts of Missouri and said administrator brought suit against the I. C. R. R. Co., she denies that she did any [fol. 76] wrongful act in this but says that she had a perfect right to do this so she was advised by her then attorney and having exercised a legal right, she is in no wise at fault or in conflict with any order of any court. And for further plea along this line she says that in the case of Mecom, Admr. vs. Fitzsimmons Drilling Company and Atlantic Oil Co., 234 U. S. 182, 76 L. Ed. 21, 52 Sup. Ct. 84, where the facts were in materiality very similar the Supreme Court

of the United States, in disposing of the so-called fraudulent purposes of malice as charged in the bill:

"But it is clear that the malice or purposes that actuated any or all of these parties in procuring a lawful or valid appointment is immaterial."

It is also held by the Supreme Court,

"It is settled law that the citizenship of a personal representative and not that of the persona controls purposes of jurisdiction."

Therefore, the citizenship of R. R. Adams, Admr., as a personal representative controls purposes of jurisdiction and of course this court has neither the power nor will it attempt to oust the Missouri courts of its jurisdiction and a decision on these questions by the Supreme Court of the United States is especially plead as an adjudication in such matters.

14

To that part of the bill which charges that it would be expensive, etc., to defend the litigation in St. Louis, Mo., it would be equally as expensive to the plaintiff in that cause but regardless of that question, there is a legal right to have [fol. 77] such suit prosecuted sanctioned by the act of Congress and where the Missouri Court refused to entertain such a suit under the Federal Employee's Liability Act the Supreme Court of Missouri reversed the trial court and the Supreme Court of the United States affirmed such action in the case of Hoffman, Judge, vs. Missouri Ferray, 47 Sup. Ct. 485, 71 L. Ed. 905, and this defendant pleads said adjudication by the Supreme Court as settling the law in this regard.

15

To all that part of the bill and the amended bill which avers that it would be deprived of its witnesses if the suit is prosecuted in Missouri, these defendants deny the truthfulness of said averment and take issue on said averment. The statutory laws of Tenn. provide how such witnesses' testimony may be taken and presented in the courts of a foreign state and the statute giving this right could be followed and the Railroad could have the benefit of all of its witnesses whose depositions it thought proper or necessary

to take. And this does not give any equity to the petitioner in these regards.

By Sec. 9806 and 9807 of the code of 1932 of Tenn. the railroad company can procure the deposition of any witnesses it wishes to take and this statutory law affords ample and all necessary relief of which the railroad company could complain.

16

The answer to all that part of the original and amended bill which charges that in a general way but not specifically giving the name of any witness that said complainant wishes to introduce in the law courts of St. Louis, Mo., this court cannot pass upon that question because it is to be presumed that the Missouri Court afforde- said I. C. R. R. full and [fol. 78] complete and adequate relief in taking testimony of its witnesses or in the production of said witnesses not present in said court. And it cannot be anticipated what that *could* would do until such matters confront said court in the proper manner and in the proper way, and especially in an orderly and in a legal way.

And as to what expenses that the railroad might incur is purely speculative and is not itemized nor set forth in detail and is uncertain and cannot be considered by this court as determinative in any wise to the right of an injunction against the prosecution of said suit in the law courts of St. Louis, Mo. It must be borne in mind that Congress has the power to regulate interstate commerce and as Paul H. Miles was engaged in interstate commerce as admitted and confessed in the I. C. R. R. original and amended bill at the time that said Miles was injured and from which injuries he died, the effect on Federal statutes confer-ing jurisdiction in any state or federal court where the defendant is found doing business. Congress is composed of some 535 Congressmen and 96 Senators, many of whom were lawyers, and it has the right and power of confer-ing jurisdiction on state and federal courts in these Federal Employee's Liability Act cases and Congress had the power and the right to burden interstate commerce as it did with such jurisdictional statutes and the remedy is legislative and not judicial. And while the defendants admitted that railroads throughout the country, and especially the I. C. R. R. have been dissatisfied with the Federal Employee's Liability Act since it was enacted by Congress, it is a question for

the railroads to procure Congress to change these legislative acts and it is wholly improper that a Court of Equity of Tenn. should be asked to change this legislative act by judicial interpretation and especially it is true since the [fol. 79] Federal Courts construing the Federal statutes have already held this jurisdictional statute as giving the right and the remedy to the injured employee and not giving the choice of tribunals to the railroad who are amply able to take care of themselves under all necessary circumstances.

17

The Federal Courts in 204 Fed. 918, 47 L. R. A. (N. S.) 22, construing the Federal Employee's Liability Act and especially the amendment of April 5, 1910, held:

"The manifest purpose was to yield to suitors under it the choice of tribunals as between the courts of the United States and of the several states."

And the construction of said Federal statute by Federal Court is binding upon state courts.

18

All other matters that are not denied or admitted are now and here specifically denied. And defendants ask that the injunction in this cause be dissolved and the bill dismissed and that they be awarded damages for the suing out of said injunction.

W. G. Cavett, H. S. Buchanan, Solicitors for Defendants.

Sept. 26/39.

[fol. 80] In the Chancery Court of Shelby County

[Title omitted]

Depositions for Defendant—Filed December 21, 1939

Depositions of John O'Dea, Ira Davis, James C. Quirk and Willard W. Norris, witnesses for the defendants in the above entitled cause, taken before me, Fred W. Niederluecke, a Notary Public within and for the City of St. Louis,

State of Missouri, at the law office of Messrs. Watts & Gentry, 717 Loudermand Building, 317 North Eleventh Street, in the City of St. Louis, State of Missouri, on the 26th day of October, 1939, pursuant to agreement. All forms and formalities, including notice, caption and certificate are waived. Questions of competency and relevancy alone are reserved for the hearing.

Appearances:

Messrs. Watts & Gentry, by William R. Gentry, Esq., and Thomas A. Evans, Esq., for the Plaintiff.

Robert A. Harris, Esq., for the Defendants.

[fol. 81] It is hereby stipulated and agreed by and between counsel for plaintiff and counsel for defendants that these depositions may be taken in shorthand by Fred W. Niederluecke and afterwards reduced to typewriting, signatures thereto being waived.

JOHN O'DEA, being produced, sworn and examined on the part of the defendants, deposes and says:

Direct examination.

By Mr. Harris:

Q. State your name, please.
A. John O'Dea.
Q. Where do you live?
A. 4208 Lawn.
Q. In what capacity are you employed by the Illinois Central Railroad?
A. City ticket agent.
Q. And where is the city ticket office located?
A. 324 North Broadway.
Q. How long have you been city ticket agent?
A. Since February, 1936.
Q. Now, state what are your duties as ticket agent, Mr. O'Dea.
A. Well, sell tickets, making reservations. Making up reports.
Q. And all of your work is done exclusively for the Illinois Central Railroad?
A. And the Pullman Company, too.

Q. Are the tickets that you sell stamped Illinois Central Railroad tickets?

A. Yes.

Q. And do you sell those tickets to passengers wishing to use the Illinois Central trains from St. Louis to points in [fol. 82] all of the various States?

A. Yes, sir.

Q. And is that ticket good for any passenger boarding your train in St. Louis, Missouri, and Illinois Central train, to their arrival in Memphis, Tennessee, or any other point in any other State?

A. What is that question?

Q. Is that ticket good for passengers boarding your trains in St. Louis, Missouri, to their arrival in Memphis, Tennessee, or any other points in any other States?

A. It is.

Q. Where the Illinois Central Railroad runs?

A. Yes, sir.

Q. Do you have anybody over you at the ticket office?

A. Not in the ticket office, no.

Q. Do you have any help in the ticket office, other employes?

A. One more.

Q. And what are his duties?

A. Same as mine. Selling tickets, making reservations, reports.

Q. Do you know whether or not the Illinois Central owns any furniture in that office?

A. I don't know.

Q. You have furniture in your office?

A. Oh, yes, but I don't know who owns it.

Mr. Harris: I believe that is all.

Cross-examination.

By Mr. Evans:

Q. You were asked about selling a ticket to Memphis, Tennessee. The train that that passenger holding that ticket would board would be pulled out of the Union Station here by the Railroad Terminal Association, wouldn't he?

[fol. 83] A. I think in most cases it is. I don't know who pulls them out; I never see the trains. I have heard that

some trains are pulled out by the Terminal; all north trains by our own engines.

Q. Your duties merely consist of when a prospective traveler comes, you sell him a ticket to his destination?

A. That is right.

Q. If he wants to go to New York State you sell him a ticket to New York State?

A. That is right.

Q. And if he wants to go out to the San Francisco Fair, you sell him a ticket out there?

A. That's right.

Q. And you sell no tickets that are purely intrastate?

A. No, sir.

Q. Tickets you sell are in the interstate business?

A. That is all.

Mr. Evans: That is all.

(Signature waived by agreement of counsel.)

[fol. 84] Ira Davis, being produced, sworn and examined on the part of the defendants, deposes and says:

Direct examination.

By Mr. Harris:

Q. State your name.

A. Ira Davis.

Q. And whom do you work for, Mr. Davis?

A. Terminal Railroad Association of St. Louis.

Q. And what is your position with the Terminal Railroad?

A. Superintendent.

Q. And are you familiar, Mr. Davis, with the workings and operations of the Terminal Railroad with reference to pulling the cars and trains of the various railroads that run in the Union Station?

A. Yes, sir.

Q. Do you know what interest the Illinois Central Railroad has, if any, in the Terminal Railroad?

A. One of the proprietary lines. That would make it about a one-fifteenth interest.

Q. And is that—would you say that represented a one-fifteenth hold of the stock?

A. No, I couldn't answer that.

Q. But you do know that they have approximately a one-fifteenth interest in the Terminal Railroad?

A. Yes, sir.

Q. And what arrangement does the Terminal Railroad have with the Illinois Central Railroad with reference to handling any of their cars or equipment from Illinois to St. Louis, Missouri?

A. Are you referring to Illinois Central south?

Q. You can take them both.

[fol. 85] A. We handle all of their freight business in and out of St. Louis. We handle all of their passenger business in and out of St. Louis, without power moving south. In turn, they handle their passenger trains north with their own engine crews and their own engine.

Mr. Evans: You mean from the south and to the south, too—don't you?

A. No, I mean from St. Louis north.

By Mr. Harris:

Q. Passenger trains coming to St. Louis from the south, or going to points in Illinois from St. Louis, Missouri, you say they are pulled by Terminal engines?

A. Yes, sir.

Q. Are those passenger engines manned by Illinois Central crews, such as flagman, conductor and switchman?

A. Manned by brakemen, baggage men of the Illinois Central, but they are under our jurisdiction when they hit our rails. They are working for us then.

Q. And does the Terminal Railroad pay the crew?

A. No, sir, the Terminal Railroad does not pay the crew.

Q. Who pays the crew?

A. I suppose the Illinois Central does.

Q. In other words, the Illinois Central doesn't pay them?

A. No, we pay the engine crew.

Q. Then you have reference only to the management and operation of the train from where you take hold of it to where you deliver it?

A. Yes, sir.

Q. Now, passenger trains leaving out of St. Louis and coming into St. Louis from the north, I believe you stated are brought in here by the Illinois Central engines?

[fol. 86] A. Yes, sir.

Q. And Illinois Central crews?

A. Yes, sir.

Q. And would you say the Terminal Railroad has nothing to do with those trains?

A. They are under our supervision from the time they hit our tracks.

Q. And in what respect are they under your supervision?

A. In the line of movement. They have to pass a line of examination, according to our rules and regulations, the same as our employes on our payroll.

Q. And does the Terminal Railroad have any particular employes on Illinois Central trains coming from the north?

A. No, sir.

Q. Now, with reference to the handling of freight cars and trains by the Terminal Railroad for the Illinois Central Railroad, do you know what charge is made for that service?

A. That all depends what commodity they are handling.

Q. The Terminal is paid, of course, for all service they render?

A. Yes, sir.

Q. And is that by an agreement with the Terminal, that the Terminal Railroad has with the Illinois Central Railroad?

A. No, sir.

Q. By what sort of arrangement is it that the Terminal Railroad is paid?

A. We handle the cars on account of the rule that the Interstate Commerce Commission lays down for us to handle a certain commodity.

Q. You don't handle cars except on request and agreement of the Illinois Central Railroad, do you?

A. We don't have no agreement.

[fol. 87] Q. Do you know whether or not the one-fifteenth interest the Illinois Central owns in the Terminal Railroad entitles them to a certain service?

A. It constitutes whatever our service is on the bill of lading. That is what our service would constitute.

Q. Under whose supervision does the Terminal Railroad proceed to pick up cars or a string of cars from East St. Louis, Missouri, to East St. Louis, Illinois?

A. Ask that again?

Q. Under whose supervision does the Terminal Railroad proceed to pick up freight cars from St. Louis, Missouri, and take them to East St. Louis, Illinois?

A. By the authority on the billing.

Q. And who does that billing come from?

A. The shipper.

Q. Who makes up the billing?

A. If it is routed on our rails the clerk makes up the billing and the man tells him what route he wants to go.

Q. And if it is not to go on your rails who makes up the billing?

A. We are governed by the receiving line. If it is routed Terminal Railroad and I. C., we handle it accordingly.

Q. Who makes up the billing, though?

A. That is made where the car is loaded.

Q. Take, for instance, carloads of automobiles out of the Chevrolet plant at St. Louis, Missouri, being shipped by way of the I. C. Railroad. I understand from Mr. Hamilton that the Terminal Railroad would pick up those cars?

A. That's right.

Q. Who would make out the bill of lading for those cars?

A. The Chevrolet Motor Company.

[fol. 88] Q. And the Chevrolet Motor Company would be charged a through rate, as I understand it, from St. Louis, Missouri, to the point of destination, is that right?

A. That's right.

Q. And who collects that rate?

A. That all depends on the billing.

Q. Well, say the billing is from Memphis, Tennessee.

A. It might be billed collect or charge. We would collect it and keep our set charge out of it, and give the rest of it to the Illinois Central. Then, it might be collect at the other end, and then they would give us our end of it.

Q. And if the Illinois Central collects they pay you?

A. That's right.

Q. Are you familiar with the agreement under which the Illinois Central owns a one-fifteenth interest of the Terminal Railroad?

A. No, sir, I am not.

Q. You know nothing about the conditions of that agreement?

A. No, sir.

Mr. Harris: I believe that is all.

Cross-examination.

By Mr. Evans:

Q. Mr. Davis, did I understand you, the Terminal Railroad Association is a corporation?

A. Yes, sir.

Q. And you understand that the Illinois Central owns some of the capital stock of the corporation?

A. It is one of the proprietary lines.

Q. By "proprietary lines", you mean it owns some of the capital stock?

A. Yes, sir.

[fol. 89] Q. Now, Mr. Davis, speaking about a shipment that originated on your line going to, we will say, Cleveland, Ohio, a bill of lading is made out which shows it moves over your line to East St. Louis over the Illinois Central, we will say, to Chicago, and over the Michigan Central or the Big Four to Cleveland, is that right? Is that the way it would be billed?

—. ——.

A. And you, just like any other railroad that is the initial carrier, you get the first movement, and then it goes to the connecting carrier, and then it goes to delivery carrier, is that right?

A. That's right.

Q. And if it is collected by you as the initial carrier or whether it is collected by the delivery carrier, the amount of money that is collected by the collecting carrier is then divided by the number of railroads that moves that shipment?

A. That is right.

Q. And the same thing applies to a car coming in over the L. & N. or Illinois Central and Missouri Pacific or any of the rest of them; if it moves over your line you deliver it, your line gets its tariff and the other line gets theirs?

A. That's right.

Q. Is the rate that is charged by your line filed with the Interstate Commerce Commission?

A. They are.

Q. Just like any other railroad?

A. Yes, sir.

Q. Your line, while it is a short line, operates so far as the collection—movement of freight and the collection of

tariff is governed exactly like any other railroad that is several thousand miles long?

[fol. 90] A. We come under the I. C. C. regulation.

Q. And you have a tariff regulation just the same as the Illinois Central?

A. Yes.

Q. And you make your charge whether it is the delivering carrier or initial carrier according to the tariffs filed by the Interstate Commission?

A. Yes, sir.

Mr. Evans: That is all.

Redirect examination.

By Mr. Harris:

Q. When a shipment is made by the Chevrolet Motor Company to Cleveland, Ohio, is there a freight tariff quoted to them as distinguished from the Illinois Central Railroad?

A. No, all that would be cared for by ourselves. The Commissions would see that our tariffs are regulated right.

Q. Well, is a tariff on the Terminal Railroad separate and distinct from the Illinois Central quoted to the Chevrolet plant——

A. (Interrupting): I couldn't tell you whether they would make a distinction in shipping to Cleveland or not.

Q. Do they make a distinction anywhere in the State of Missouri as to where the Terminal Railroad is going to deliver the shipment?

A. All we would be interested in would be our tariff.

Q. But I say, you don't quote any tariffs prospectively shipped for you?

A. No, sir.

Q. The only one would be whatever road it is — go by?

A. I don't know whether they quote the tariff or not.

Q. But the Terminal doesn't?

A. They do not.

Q. The Terminal doesn't own any box cars?

[fol. 91] A. No, sir.

Q. The Terminal doesn't solicit any freight, do they?

A. They do.

Q. In what way?

A. We have solicitors in Los Angeles, California, Pittsburgh, Pennsylvania, Cleveland, Ohio, and anything that

is liable to go through Chicago or Memphis from east to west.

Q. Any freight in the City of St. Louis, you don't solicit that going out of St. Louis, do you?

A. Certainly.

Q. And is there any other road that can leave out of St. Louis over to connecting lines?

A. You mean east?

Q. Any direction.

A. Yes.

Q. What roads?

A. Alton & Southern.

Q. Alton & Southern?

A. Sure.

Q. And what other roads besides the Alton & Southern?

A. Well, C. B. & Q.

Q. The C. B. & Q.——

A. (Interrupting): The C. B. & Q. transports freight by way of the Alton bridge. We solicit business from the St. Louis gateway, and also tell our shippers the short route would be by way of our rails or in place of the C. B. & Q. in place of any other railroad that uses bridges.

Q. Would you solicit any freight from any of the fifteen railroads that own a proprietary interest in the Terminal Railroad?

A. Only so far as we are concerned. We solicit freight [fol. 92] for any line going to any line, but we won't solicit outside of the Terminal territory. We solicit there for the transfer across the bridge.

Q. Do you know what officers, if any, of the Illinois Central Railroad are engaged, connected in an official capacity with the Terminal Railroad?

A. No, not in St. Louis, I don't.

Q. Well, I mean regardless of where they live.

A. We do business with the Chicago office and the St. Louis office. There are general offices in Chicago and East St. Louis.

Q. In what way is the superintendent in East St. Louis connected with the——

A. (Interrupting): In no way.

Q. I asked you if you know of any officers or stockholders of the Illinois Central Railroad that were officers or directors or in any official capacity with the Terminal.

A. Yes, I know one who is.

Q. Who is that?
A. Beven, president of the Illinois Central Railroad.

Mr. Harris: I think that is all.

Recross-examination.

By Mr. Evans:

Q. You say your line has an office for the solicitation of freight in what towns?

A. Los Angeles, Kansas City, Cleveland and Chicago; and the Cleveland man also handles the Pittsburgh area.

Q. Your employes in those towns that you have just named devote their time to the solicitation of freight to move over your line?

A. That is right.

[fol. 93] Q. Now, it doesn't make any difference to your line, does it, Mr. Davis, whether a railroad is owned as a proprietary line or not? What you are concerned about is to get freight to move over your lines regardless of from where it comes?

A. No, we are not interested in what road it goes over just so it goes through our gateway.

Q. Just so you get a haul out of it?

A. That's right.

Mr. Evans: That is all.
Mr. Harris: That is all.

(Signature waived by agreement of counsel.)

[fol. 94] James C. Quirk, being produced, sworn and examined on the part of the defendants, deposes and says:

Direct examination.

By Mr. Harris:

Q. State your name, please.
A. James C. Quirk.
Q. And by whom are you employed?
A. Illinois Central.
Q. In what capacity?
A. Perishable freight agent.

Q. And where is your job located?
A. Main and O'Fallon street; team track.
Q. And what are some of your duties?
A. Soliciting business; seeing that our business is taken care of.
Q. And what do you do? Do you have a yard there that you have freight in?
A. No, we haven't; the Terminal Railroad has.
Q. But you store Illinois Central cars there?
A. We bring them in the yard.
Q. And keep them until you move them on farther?
A. That's right.
Q. And do you ship freight out of that yards?
A. We do not. The Terminal Railroad does.
Q. Well, is it Illinois Central cars?

Mr. Evans: I am going to have to object to the leading.
Mr. Harris: I asked him if it is Illinois Central cars.
Mr. Evans: I object to it on the ground it is leading.
Mr. Harris: All right.
The Witness: If it happens to be an Illinois Central [fol. 95] car that the Terminal Railroad gives out—if they are giving cars out, we haven't anything to do with cars for loading.

Q. Do you ship carload or less than carload?
A. By carload.
Q. Do you make any waybills out?
A. No, sir, that is handled by the Terminal Railroad.
Q. Are you the only one for the I. C. that works at the perishable yards?
A. At that point, yes.
Q. And what do you do besides see that the cars get out? Do you have any other dutie ?
A. Well, yes; furnishing the consignee with information as to when their car comes in; furnish them with information as to movements on them.
Q. In other words, you look after the——

Mr. Evans: I object to that as being leading. He just told what he did.

By Mr. Harris:

Q. Well, do you look after any other business besides what you have mentioned for the I. C. Railroad?

A. Well, anything connected with the traffic end of it. As far as the car itself in that particular yard, I don't have a thing to do with it. That is strictly up to the Terminal jurisdiction.

Mr. Harris: I believe that is all.

Cross-examination.

By Mr. Evans:

Q. Mr. Quirk, as I understand it, your duty is to solicit perishable freight to be moved by the Illinois Central in interstate business?

A. That is correct.

Q. And that is the only duties you have got, solicitation and giving information to customers?

[fol. 96] A. Yes, that's right.

Q. You have got nothing to do with the movements of the car?

A. Nothing whatsoever.

Q. That is all done by the Terminal Association?

A. That's right.

Q. So when you solicit the business and then give them information about when it is going to arrive or go out and things of that kind, that is the extent of your duties?

A. That's right.

Mr. Evans: I believe that is all.

Mr. Harris: That is all.

(Signature waived by agreement of counsel.)

[fol. 97] Willard W. Norris, being produced, sworn and examined on the part of the defendants, deposes and says:

Direct examination.

By Mr. Harris:

Q. State your name, Mr. Norris.

A. Willard W. Norris.

Q. Who do you work for, Mr. Norris?

A. Illinois Central Railroad.

Q. What capacity?

A. Station passenger agent.

Q. Is that at Union Station?
A. Yes.
Q. How long have you been working as station passenger agent?
A. Thirteen years.
Q. What are your duties as station passenger agent for the Illinois Central Railroad?
A. Oh, I check the equipment when the trains come in, when the train is outbound see the proper equipment is in there and meet incoming trains; assist elderly people. If anybody is having trouble with their ticket, straighten it out.
Q. Do you have anything to do with selling of tickets?
A. No.
Q. You do not?
A. No.

Mr. Harris: I believe that is all.
Mr. Evans: That is all.

(Signature waived by agreement of counsel.)

[fol. 98] State of Missouri,
City of St. Louis, ss:

I, Fred W. Niederluecke, a Notary Public within and for the City of St. Louis, State of Missouri, certify that each of the foregoing witnesses were duly sworn by me before their depositions were taken.
My commission expires April 14, 1940.
Fred W. Niederluecke, Notary Public within and for the City of St. Louis, State of Missouri.

[fol. 99] In the Chancery Court of Shelby County

[Title omitted]

Depositions for Plaintiff—Filed January 18, 1940

Depositions of F. F. Munson and John B. Hamilton, witnesses for plaintiff in the above styled cause, taken before me, Fred W. Niederluecke, a notary public within and for the City of St. Louis, State of Missouri, at the law office of Messrs. Watts & Gentry, 717 Louderman Building, 317 North Eleventh Street, in the City of St. Louis, State

of Missouri, on the 26th day of October, 1939, pursuant to agreement. All forms and formalities, including notice, caption and certificate are waived. Questions of competency and relevancy alone are reserved for the hearing.

Appearances:

Messrs. Watts & Gentry, by William R. Gentry, Esq., and Thomas A. Evans, Esq., for the Plaintiff.
Robert A. Harris, Esq., for the Defendant.

It is hereby stipulated and agreed by and between counsel for plaintiff and counsel for defendants that these depositions may be taken in shorthand by Fred W. Niederluecke and afterwards reduced to typewriting, signatures thereto being waived.

[fol. 100] F. F. Munson, being produced, sworn and examined on the part of the plaintiff, deposes and says:

Direct examination.

By Mr. Evans:

Q. State your name.
A. F. F. Munson.
Q. Mr. Munson, what position, if any, do you hold with the Illinois Central Railroad Company?
A. Claim agent.
Q. How long have you been claim agent for the complainant, Illinois Central Railroad Company?
A. A little over thirty-two years.
Q. You are now located at Memphis?
A. Yes.
Q. Did you ever live in St. Louis?
A. Yes, sir.
Q. And during the time you lived in St. Louis were you claim agent for the Illinois Central Railroad Company?
A. I was.
Q. In a general way, Mr. Munson, what are the duties of the claim agent for the Illinois Central?
A. Investigate all accidents and correlate the facts and if suit results to arrange for the attendance of witnesses at the trial of the case.

Q. Did you in discharge of your duties as claim agent investigate the accident that resulted in the death of Mr. Paul H. Miles?

A. I did.

Q. Where did that accident occur?

A. Nonconnah Yards, Memphis, Tennessee; near Memphis.

[fol. 101] Q. The Nonconnah is the principal yards of the Illinois Central and is located two or three miles south of the city limits?

A. That is correct.

Q. Mr. Munson, has the declaration, as we call it, or bill of complaint that was filed in the St. Louis court, or petition, as I believe they call it in St. Louis, filed in the St. Louis court in that case of R. R. Adams, Administrator of the Estate of Paul H. Miles, deceased, been read to you, so you are familiar with it?

A. I read it, yes.

Q. I hand you what purports to be a copy of the petition in that case, duly certified by the clerk, and ask you to please state if that is the petition which you say has been read to you this morning?

A. Yes, sir, it is.

Q. Will you make that exhibit No. 1 to your testimony?

A. I will.

(Whereupon, said paper was marked by the reporter as Plaintiff's Exhibit No. 1, F. W. N. 10/26/39.)

By Mr. Evans:

Q. Are you familiar with the allegation of negligence contained in this petition?

A. I read it, yes. I am familiar with it.

Q. What is the allegation of negligence alleged in the petition?

A. It says, "Negligence and carelessness of the defendant"; no specific items mentioned.

Q. Now, Mr. Munson, did you and Mr. Gentry and I this morning make a list or tabulation of the various facts that could be proven under that general allegation tending to establish negligence under that petition?

A. The various charges that can be raised under that charge, yes, sir.

[fol. 102] PLAINTIFF'S EXHIBIT I

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, FEBRUARY TERM, 1939

ROBERT R. ADAMS, Administrator of the Estate of Paul H. Miles, Deceased, Plaintiff,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, a Corporation, 324 North Broadway, Defendant

PETITION

Plaintiff states that he is the duly appointed and acting administrator of the estate of Paul H. Miles, Deceased, under and by virtue of a certain order and decree of the Probate Court of the City of St. Louis, Missouri, and by virtue of said order and decree so appointing him is now the duly qualified administrator of the said estate and as such empowered to institute this action.

Plaintiff states that the defendant is and at all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of law with an office and place of business located in the City of St. Louis, Missouri, and that it is and at all the times hereinafter mentioned was a common carrier of freight and passengers for hire by railroad in interstate commerce and that at the time of the [fol. 103] injuries and death of the said Paul H. Miles, as hereinafter referred to, the deceased and the defendant were engaged in work in interstate commerce in that said cars in the train hereinafter referred to contained shipments of freight in interstate commerce and that certain of said cars were en route to points outside of the State of Tennessee, to-wit, to points in the State of Kentucky, and that this action is brought under and by virtue of the provisions of the Federal Employers Liability Act.

Plaintiff for his cause of action states that on or about the 5th day of June, 1938, Paul H. Miles, deceased, was employed by the defendant as a car inspector in what is known as the Nonconnah Yards in the City of Memphis, Tennessee, and more particularly while engaged in inspecting a cut of cars in the yards aforesaid, and as a direct and proximate result of the negligence and carelessness of the defendant, by and through its agents, servants and employ-

ees, the said Paul H. Miles was caused to be struck, knocked down, and run over by one or several of the said cars, and to sustain injuries of such severity that he died as a direct and proximate result thereof.

Plaintiff further states that the deceased left surviving him at the time of his death his widow, Jessie Miles, and one child, and that this action is brought for the benefit of the surviving widow and child of the said Paul H. Miles, deceased.

Wherefore, Plaintiff prays judgment against the defendant in the sum of $45,000.00, together with the costs of this action.

(Signed) Louis E. Miller & Robert Harris, Attorneys for Plaintiff.

A true copy. Attest: H. Sam Priest, Clerk. (Seal.)

[fol. 104] STATE OF MISSOURI,
City of St. Louis, ss:

The State of Missouri, To the Sheriff of the City of St. Louis—Greeting:

We command you to summon: Illinois Central Railroad Company, a corporation, to appear before the Judges of our Circuit Court, on the first day of the next term thereof, to be held in the City of St. Louis, at the Civil Courts Building, 12th and Market Streets, on the First Monday of February next and there to answer the complaint of Robert R. Adams, Administrator of the Estate of Paul H. Miles, Deceased, as set forth in the annexed petition; and have you then and there this writ:

Witness H. Sam Priest, Clerk of our said Court, with the seal thereof hereto affixed, at office in the City of St. Louis, this 20th day of January, in the year of our Lord, nineteen hundred and thirty-nine.

H. Sam Priest, Clerk. (Seal.)

STATE OF MISSOURI,
City of St. Louis, ss:

I, H. Sam Priest, Clerk of the Circuit Court, City of St. Louis, certify the above and foregoing to be a true copy of the Original Writ in the above entitled cause, as the same is attached to the petition on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of this court, at office in the City of St. Louis, this 20th day of January, 1939.

(Signed) H. Sam Priest, Clerk.

[fol. 105] SERIES C

No. 30432

CIRCUIT COURT, CITY OF ST. LOUIS, FEBRUARY TERM, 1939

ILLINOIS CENTRAL RAILROAD COMPANY, a Corporation, 324 North Broadway

408 Pine (Frank Kelly)

912

Copy of Writ and Petition.

H. Sam Priest, Clerk.

[fol. 106] Q. Now, Mr. Gentry is the attorney for the Illinois Central in St. Louis?

A. Yes.

Q. Have you that paper in your hand?

A. I have.

Q. Will you make that Exhibit 2 to your deposition?

A. I will.

(Whereupon, the said paper was marked by the reporter as Plaintiff's Exhibit No. 2, F. W. N. 10/26/39.)

Mr. Harris: What is the question you asked?

Mr. Evans: I just asked him if that is the list prepared by us three this morning, which might arise under your allegation.

Mr. Harris: In other words, you are offering that as a conclusion on his part?

Mr. Gentry: No, what you might attempt to show under your petition.

Mr. Harris: Of course, I object to any offer of any proof as to what we might attempt to show. I think that is purely a conclusion and could not be anticipated by the plaintiff in this case in this injunction.

By Mr. Evans:

Q. Now, Mr. Munson, with that in mind, that is to say your Exhibit No. 2 as to the various acts of negligence that may be proven and that the plaintiff is entitled to prove under the broad allegations of the declaration, have you made a determination of the witnesses that will be necessary to bring from Memphis to St. Louis at the trial of this case?

A. Well, yes.

Mr. Harris: I want to object to that, of course, as being irrelevant and incompetent and not tending to prove the principal

[fol. 107] PLAINTIFF'S EXHIBIT 2

L. N. N. 10/26/39.

Questions That Might Arise Under Broad Allegations of Present Petition

1. Negligent operation of the train.
(a) The speed.
(b) Failure to maintain a lookout for the deceased.
(c) Movement of cars with the engine detached.

2. Assumption of Risk.
(a) Speed of the train.
(b) Deceased attempted coupling before train made up.
(c) Absence of warning.
(d) Absence of blue flag.

3. Contributory negligence.
(a) Failure of deceased to see the approaching cars.
(b) Attempt to make coupling before train made up.
(c) Attempt to make coupling when the cars were approaching.
(d) Failure to use blue flag.

4. Condition of track.

5. Proper rules and regulations for the operation of the yard.

6. The layout of the yard—civil engineer.

7. Deceased wasn't ordered by superior to make coupling but did it on his own responsibility.

8. Extent of damages.
(a) Earning capacity.
(b) Physical pain and suffering.

[fol. 108] point at issue, namely as to whether or not the Illinois Central Railroad Company is doing business in the City of St. Louis, State of Missouri, such as brings it within the jurisdiction of the courts under the Federal Employers' Liability Act.

By Mr. Evans:

Q. Now, Mr. Munson, tell us in a general way the circumstances under which Mr. Miles was killed.

A. Well, Mr. Miles was——

Mr. Harris: Pardon me.

Mr. Evans: Let me say this: I am not trying to cut you off. We reserve all questions of competency and relevancy at the hearing. You don't have to object to anything except a leading question. Any other objection you can state at the hearing, but I have no objection to your stating it now.

Mr. Harris: We oftentimes object here during the deposition and, of course, if we think it would be proper to make the proper objection, then we also make the objection at the time of trial.

Mr. Evans: I am just telling you what the practice is, that is all.

Mr. Harris: I just wish to object to any testimony as to Mr. Munson's knowledge of the accident as being incompetent and irrelevant, unless he saw the accident happen and knows of his own knowledge as to what happened.

By Mr. Evans:

Q. Go ahead, Mr. Munson.

A. I, of course, didn't see the accident. I investigated it and talked to every witness that could possibly know anything about it so far as I was able to learn.

Q. I am just going to ask a leading question; you can object if you want to. Mr. Miles received the injuries from which he died when he was attempting to make a coupling of a string of cars in the Nonconnah Yards?

[fol. 109] A. A coupling in the air hose.

Mr. Harris: I object to that as leading and suggestive, and furthermore, it would be hearsay and incompetent and irrelevant.

By Mr. Evans:

Q. Now, Mr. Munson, was there another train standing near there at the time of the accident?

A. There was a switch engine standing there close to where this occurred.

Q. Relatively, where was it standing?

A. Relatively, thirty feet from where the accident occurred, in a lateral direction.

Mr. Harris: Will you have him describe the yards a little more fully as to directions and things of that sort, if he is going to try to testify as to what happened?

By Mr. Evans:

Q. The general direction of the yards, the tracks and the yards——

A. (Interrupting): The general direction of the Nonconnah Yards, the tracks are east and west, generally speaking.

Q. And what track was the train on which Mr. Miles was working standing?

A. On what was known as D-8.

Q. And on what track was this other switch engine that you say was standing nearby about thirty feet away?

A. On D-6.

Q. Now, the train crew of the train on which Mr. Miles was working at the time consisted of what? What men? I mean the positions of the men.

A. Engineer, fireman, engine foreman and two helpers or two switchmen. Five would constitute a complete switching crew.

Q. And how many men constituted the switching crew of the switch engine that was standing on the parallel track? [fol. 110] A. Five.

Q. Did any of the members of the crew of the switching crew on the parallel track see anything of this accident?

A. They were all witnesses.

Q. So that if the suit is tried in St. Louis, tell us whether or not it would be necessary to bring each member of both train crews to St. Louis for that purpose.

A. It would.

Q. Now, what other witnesses will it be necessary to bring to St. Louis in the event the case is tried in St. Louis?

A. Well, there is another man not engaged in the crew, a car inspector, the yardmaster in charge of that particular

part of the Nonconnah Yards, the general yardmaster, the trainmaster who was in direct supervision over all the terminals; the superintendent of the terminals, the master mechanic who is the head of the mechanical department in which Mr. Miles was engaged, the general car foreman and the assistant general car foreman.

Q. State whether or not you have interviewed each of the men holding the positions you have called off.

A. I have.

Q. Assuming that it would be necessary to meet with our proof the various defenses are listed there in your Exhibit No. 2, tell us whether or not it would be necessary or at least advisable to bring to St. Louis at the trial of this case all the witnesses whose names you have called off.

A. I would think it necessary to make a proper defense.

Q. That was the conclusion you reached after going into the matter this morning with me and Mr. Gentry?

A. Yes, sir.

[fol. 111] Q. Now, Mr. Munson, do you say that it would be necessary to bring up here as a witness the yardmaster, the general yardmaster, and also the yardmaster of the Nonconnah Yards, is that correct?

A. That is correct. There are four yards in what is known as Nonconnah: A, B, C and D. There is a yardmaster in each one of those yards in the daytime and also at night, and the general yardmaster has charge of all those yardmaster and their men.

Q. Well, now, we will take the general yardmaster; what are his duties?

A. He has general supervision of the men engaged in making up trains and breaking up trains; see that the trains are assembled and gotten out of the terminal on the way to their destination. In addition to that, to see that cars arriving at Memphis are assembled and taken to the various yards of the terminal which is thirteen miles long, for distribution for delivery to the various industries or delivered to the tracks of the various connecting lines.

Q. What do you mean, Mr. Munson, in a general way by making up and breaking up trains?

A. What you call making up a train is selecting all the cars that are going into a certain train and assembling them on one track so that the caboose and the engine can be applied, and then it becomes a train and is ready to go on its way.

Q. And what do you mean by breaking up a train?

A. A train arrives at Nonconnah; the cars are switched, cars going through Memphis to some other point or destination are switched to the other tracks on which they are to be handled. The freight for Memphis proper is taken to the yard terminal where it is to be delivered to the consignee. Cars to be transferred to other lines for continuation on their journey are assembled and delivered to eight [fol. 112] other railroads with whom we connect at Memphis.

Q. Now, the general yardmaster has charge of that work in Memphis?

A. In the Nonconnah Yard, yes, sir.

Q. Is he the highest man or highest officer in the Nonconnah Yard?

A. In the yard itself, yes.

Q. So if the general yardmaster is brought to St. Louis for the purpose of testifying in this case, during his absence the man in direct charge of that work will be away from Memphis, away from his duties?

A. That is correct.

Q. For whatever length of time he is required here in St. Louis?

A. That is correct.

Q. Now, you said that the trainmaster having to come as a witness. What are the duties of the trainmaster, in a general way?

A. The trainmaster has supervision over all the yards, of which we have several in Memphis, and is responsible for not only Nonconnah but all the yards which make up the terminal.

Q. How many yards are there?

A. Nonconnah south yards, Iowa Avenue, Corry yards and one other.

Q. And each of those has a night yardmaster and day yardmaster?

A. Yes.

Q. And the trainmaster is the head official over all of that work in these yards?

A. He has direct charge of it, yes, sir.

Q. Now, you spoke of the master mechanic being required. What are the duties of the master mechanic?

Q. The master mechanic is the head of the mechanical department. He has charge of maintaining in running or-

der all the locomotives, passenger cars, freight cars and the supervision of the inspection and repairing of all rolling stock, which may arrive at Memphis from any direction, either on our own lines or from connecting lines.

[fol. 113] Q. Is it his duty to keep in repair all the freight cars that come into the Memphis terminal?

A. Yes, the general supervision over it, yes, sir.

Q. Is that true of any box car that comes in from the Illinois Central without regard to what particular railroad owns that box car?

A. That is correct.

Q. Now, what about keeping the engines in repair? Does he have anything to do with that?

A. He has complete charge of that.

Q. What engines come into the yard?

A. Our passenger engines from the South and the Illinois Central operates between New Orleans and Memphis; over the Y. & N. O. they operate from Vicksburg to Memphis. From the North, some from Louisville to Memphis; some from St. Louis through to Memphis, and I believe either Centralia or Kankakee or Chicago, I believe some of them do run all the way through, from Chicago to Memphis.

Q. What about the Y. & Mississippi Valley?

A. I say they operate from Vicksburg to Memphis.

Q. And the master mechanic is the man who is in charge of the keeping of the rolling stock of freight cars in repair, and all passenger cars in repair?

A. And all other machinery used on the railroad, clam shells, pile drivers and machinery of that kind.

Q. What, if anything, has he to do with the shops located in Memphis?

A. He is the chief supervising operator of the roundhouse, boiler shops, car shops.

Q. You also said it would be necessary to bring the superintendent. What are his duties?

[fol. 114] A. Mr. Holcomb is the chief operating officer of the company at Memphis. He has direct supervision of the trainmaster, master mechanic and all other employes, including the local freight agent and every employe in Memphis except myself.

Q. Mr. Munson, what are the duties of the general car foreman?

Q. The general car foreman has charge of all the car men engaged in repairing of cars that are oftentimes in need of

repairs; also in charge of the inspection of all cars passing through the terminal for defects, that is, physical defects or penalty defects, brakes and hose; in fact, a general inspection of all equipment both freight and passenger.

Q. I take it from that answer he works under the master mechanic?

A. That is right.

Q. And how — employes are there in Memphis, approximately?

A. Well, right at the present time I don't know. There are a good many hundred men working there. Approximately three thousand.

Q. So, as I understand it, Mr. Munson, to get it down into one sum, in order to try this lawsuit you would have to bring the members, all the members of two switching crews, bring the general superintendent, the general yardmaster, the master mechanic who is the head of his department, trainmaster, head of his department, general yardmaster, head of his department, is that true?

A. That is true that far. There are some others you haven't mentioned.

Q. Well, who?

A. There are some other witnesses who don't occupy an official capacity.

Q. Well, who?

A. There is one car inspector—two car inspectors, and [fol. 115] there is a civil engineer who will be necessary to prove the conditions existing at the scene of the accident at that time; the layout of the tracks, and so forth; a statistician, and the timekeeper and the doctor who attended Mr. Miles after his injury.

Q. Mr. Munson, you have had, I believe you said twenty-nine—been claim agent for how many years?

A. Thirty-two plus years.

Q. Is it also part of your duty as claim agent to attend the trial of cases?

A. Absolutely.

Q. Well, from your experience, Mr. Munson, of more than thirty years of attending trials of lawsuits of this kind, and considering the number of witnesses the defendant is going to have alone, and not knowing how many witnesses the plaintiffs will have, how long would you say it would take to try this lawsuit?

A. If we got into the case promptly on the day it was set, I would say a minimum of two days, not counting the time that would be consumed in bringing them up a long distance, and the return of the witnesses to their homes. In other words, a minimum of four days.

Q. And as many more days as the case went over from day to day waiting to be reached?

A. And depending on how vigorously the witnesses were cross-examined and how much time their testimony takes.

Q. Now, Mr. Munson, suppose the case were to be tried in Memphis instead of in St. Louis, what saving of time and what saving of the disruption of the company's business could be effected?

A. The majority of these witnesses could be left at their work, called when wanted, and released after they testify, with practically no interruption of their usual work.

[fol. 116] Q. Tell us whether or not it is a customary practice in Memphis when we call us witnesses busy men such as a superintendent, trainmaster, yardmaster, that we call them when we need them and put them on the stand and they return to their work immediately.

A. That is our practice, yes, sir.

Q. And if they were to be used in this case they wouldn't be away from their duties more than an hour or two?

A. That is approximately correct.

Q. Now, Mr. Munson, have you made any—have you advised yourself about what it would cost per day in salaries alone to bring those witnesses to St. Louis?

A. The salaries alone would be about two hundred and twenty-five to two hundred and thirty dollars per day. That is wages alone, salaries.

Q. Under the contract with the labor union, tell us whether or not the railroad company is required to pay the wages or salary of employes while they are away to testify in lawsuits.

A. Not only all the time they are away from their work, but we have to furnish them living accommodations, meals, lodging, Pullman transportation, and so forth.

Q. So that the railroad company will be put to the additional expense of hotels for the men while they are in St. Louis besides their salaries?

A. Yes, sir.

Mr. Evans: You can take the witness.

Cross-examination.

By Mr. Harris:

Q. Mr. Munson, do you know why the general yardmaster would have to be present for this case, if it were tried in St. Louis, Missouri?

[fol. 117] A. Yes, to meet any charge that there was negligent operation that varied from the usual practice.

Q. It is the yardmaster's duty in operation, as you call it, to direct the car inspectors as to when and where to make inspections?

A. Not the yardmaster, no. That comes under the general car foreman's jurisdiction.

Q. Now, as I understand, the yardmaster has nothing to do with the controlling or at least the managing of the car inspectors?

A. That is correct.

Q. And, of course, the yardmaster would have control of the operation of the switch engines and making up and breaking up trains?

A. That is correct.

Q. No. The car inspector, the general car foreman, you stated what his duties are?

A. Yes.

Q. Now, isn't the general car foreman's duty to know when all inspections are to be made and to order all inspections made?

A. Well, in a general sort of a way. He assigns inspectors to the various yards for various tours of duty, eight hours each, and he is responsible for the proper performance of these car inspectors.

Q. Now, these facts which you are testifying to as to the various duties of the men, is that from your observation, or what the men have told you, or is it from an official source? I mean, that it is their duty, or do you know that?

A. That is what I know from personal contact with them for over thirty-two years.

Q. Now, you have, of course—all men who have been with the I. C. Railroad for a number of years are given vacations, are they not?

A. Not any men under contract. The only vacations they get—I think there are seven holidays during the year that they don't work.

[fol. 118] Q. That is seven holidays, you mean different holidays?

A. Well, New Year's, Labor Day, Decoration Day, Fourth of July, Thanksgiving and Christmas.

Q. Now, does that apply to yardmasters, general car foremen, trainmasters?

A. They are not under contract.

Q. They are not under contract?

A. No, sir.

Q. In other words, is the yardmaster or general yardmaster at Nonconnah Yards at Memphis, Tennessee, does he get a vacation every year?

A. Not unless he takes it voluntarily.

Q. I mean, is it customary to give him a vacation for two or three weeks or whatever the time might be?

A. No, I think he gets either two days every half month or every month, I don't know. That is due to the fact that they work twelve hours a day and they equalize it by——

Q. (Interrupting:) They do give them two days off?

A. Yes, but he really puts in the hours, because he puts in more than the eight hours usual working day.

Q. You say you don't know whether the railroad company gives the general yardmaster a vacation each year?

A. I don't know that, no.

Q. And how about the general car foreman?

A. I have to make the same answer. They are in an official capacity.

Q. Well, do you know from your thirty-two years' experience and observation as to whether or not they actually do take a vacation, as a rule?

A. Most of them do take a vacation; whether it is with pay, that I couldn't tell you.

[fol. 119] Q. And how long have you known the general yardmaster in Memphis?

A. Well, the present one I would say for ten years.

Q. And how about the general car foreman, how long have you known him?

A. Practically the same length of time.

Q. And the trainmaster?

A. For twenty-five years.

Q. And the superintendent, what do you call it?

A. Just the superintendent.

Q. How long have you known him?

A. I would say not over ten years.

Q. And the master mechanic?

A. Twenty years.

Q. Now, are all of those men *men* mentioned considered officials?

A. Yes, sir.

Q. And do you know whether or not during the ten years of your acquaintance with them that it has been customary for them to take a vacation each year at some time during the year?

A. I wouldn't know from my personal knowledge, but I assume they are like me, they do take off once in a while.

Q. Is it considered generally customary for officials that have been with the railroad for a number of years to take a vacation each year?

A. Some of them do and some of them don't.

Q. Is it considered customary?

A. Yes; official or non-official.

Q. Do you know who would take the yardmaster's place in case he took a vacation?

A. Well, they would have to get some yardmaster to take his place and do the best he can.

[fol. 120] Q. And what yardmaster would you have in mind that might take the general yardmaster's place when he is on a vacation?

A. I wouldn't be able to answer that question, because I have nothing to do with the placing of the men.

Q. They would only place a competent man there, would they not?

A. I would assume that they would, yes.

Q. And the same thing would apply to a general car foreman, would it not?

A. Yes.

Q. And the master mechanic?

A. Yes.

Q. Superintendent?

A. Yes.

Q. And in fact, anyone connected with the operation of the yards or the general service of the Illinois Central or the Nonconnah Yards of the Illinois Central System there, if they had to replace a man who was regularly on the job it would be a competent man, would it not?

A. I imagine they would get the best man available.

Q. Now, how about when men are sick? For instance, the men just mentioned, the officials? Do they have somebody to take their place if they are sick?

A. Any length of time, yes.

Q. Now, in your experience with the railroad, Mr. Munson, have you had an occasion to prepare cases that were to be tried at other points than the State of Tennessee?

A. Yes, sir.

Q. And to just — points in the State of Tennessee does the Illinois Central and its affiliates such as you would be employed to assist in the preparing of cases for, run to?

[fol. 121] A. What we call the main line of the Illinois Central across the State from north to south at a point beginning at Fulton, Kentucky, just on the State line of Kentucky and Tennessee, directly south through Memphis to a point known as State Line, which is the boundary between the northern part of Mississippi and the southern part of Tennessee. In addition, there is a line from Fulton to Jackson, Tennessee, that runs through to Granada that crosses the southern boundary of Tennessee at a point, a station known as Middlebury. There is two lines that travel from north to south. In addition, there is a line running from Woodstock just north of Memphis out around the outskirts of Memphis down to the Nonconnah Yards.

Q. How far into eastern Tennessee does the Illinois Central extend?

A. Jackson, Tennessee, is probably the most easterly point, with the exception of the line that runs from Jackson to Corinth, which I overlooked a while ago.

Q. Does the Illinois Central have any lines or operate any trains more to the eastern part of Tennessee?

A. Those are the only lines we have in Tennessee.

Q. Of course, the I. C. runs the full length of the State of Mississippi, doesn't it?

A. North to south.

Q. Now, in the preparation of cases where claims have been presented against the I. C., have you had occasion to prepare cases where they are tried in the State of Mississippi?

A. Yes, I have that territory.

Q. And how far south in the State of Mississippi have you had an occasion to prepare cases for trial?

[fol. 122] A. It depends on what territory I had. I was located at Granada and naturally everything in that terri-

tory. I was located at Jackson, Mississippi, and naturally everything in that territory.

Q. What is considered the distance from Memphis, Tennessee, to the southern boundary of the State of Mississippi?

A. I would say a little better than three hundred miles.

Q. And how often had you had an occasion to attend the trial of cases in the southern part of Mississippi?

A. When I was located in the southern part of Mississippi I attended all of them.

Q. What I intended to ask you was with reference to any claims that arose in the northern part of Mississippi near the State of Memphis, Tennessee, or in the State of Tennessee or near Memphis, Tennessee.

A. We have very few cases arising in Tennessee that are filed in Mississippi.

Q. Well, have you had any knowledge—you have attended the trial of cases which are set for trial in the southern part of Mississippi that occurred in Tennessee?

A. Never have to the best of my recollection.

Q. Now, Mr. Munson, you have stated that the engineer, the fireman, I believe the brakemen, switchmen, I believe you named five members of the crew?

A. Each crew.

Q. Would you — to attend if this case was tried in St. Louis, Missouri?

A. That is correct.

Q. Do you know why—withdraw that question. What is the name of the engineer of either one of the crews which you think would have to attend?

A. Mr. Carraway.

[fol. 123] Q. And what crew is he the engineer of?

A. He was the engineer of the crew that was handling the cars involved in this accident.

Q. And what would be the name of the fireman on that crew?

A. I don't know whether I have got those divided as to crews or not, Mr. Harris. I think that fireman is Randal Macklin.

Q. That is of the engine that was handling the cars being inspected?

A. Yes, sir, that is right.

Q. Who is the engine foreman on that crew?

A. J. H. Holt.

Q. And who were the other two switchmen?

A. L. C. Wallace and Jim Osborn.

Q. Now, will you give me the names of the crew on the engine which you stated was standing about thirty feet from where the accident happened?

A. Putnam Dye, he is a switchman.

Q. Do you know his position?

A. Just a helper.

Q. And who are the other members of the crew?

A. General Perkins, switchman; Charles Deaton, foreman, and I haven't got the name of the engineer and fireman on that other engine. I haven't got anything but a skeleton file here; that is the reason I can't give you those other two names.

Q. You mean on the engine that was standing by?

A. On the standing engine. I only have, as I say, a skeleton file here.

Q. You are reading from your file there, are you?

A. I am reading from a memorandum I made from the original file.

Q. May I see that memorandum?

[fol. 124] A. Well, it is just a memorandum that I made for my own convenience.

Q. Well, you are reading from it here as a matter of record, and I believe it should be——

Mr. Evans: He could have answered——

The Witness: (Interrupting) Simply to refresh my recollection.

Mr. Harris: I think I should be entitled to see the file, to see what he is reading from.

A. Well, on advice of counsel——

Mr. Evans: (Interrupting) I don't think so.

A. I decline to furnish it.

By Mr. Harris:

Q. Well, does the file that you have read from there, the names that you have mentioned here, all the names you have mentioned here, all the names you have given in answer to Mr. Evans' questions, are they contained in the file that you have been reading from?

A. From memorandums I made from the original file, yes.

Mr. Harris: Well, I would like to offer that file as Defendants' Exhibit No. 1. Now, of course, if Mr. Munson refuses to show it on advice of counsel——

Mr. Evans: (Interrupting) That is his answer. He refuses to show it on advice of counsel.

The Witness: This is my personal file, not the company's file.

Mr. Harris: Let the record so show.

By Mr. Harris:

Q. Now, the railroad men, do they not, Mr. Munson, have the privilege and right to take off any time that it might be necessary, that is, in the case of something in the way of emergency or sickness? They have the right to take off, do they not?

A. You mean to lay off?

[fol. 125] Q. Yes.

A. Of course, if a man is sick or has death in his family, but if they can't replace a man they usually try to keep them from laying off.

Q. The men you have mentioned here, the general car foreman, the trainmaster, the superintendent and the master mechanic, those men, if the occasion arises, all have the right to take off, do they not?

A. Oh, yes.

Q. And if they do take off, there is a competent man put in their places, is there not?

A. If they have a competent man to take his place they replace him with a competent man.

Q. Don't you know of your own knowledge from contact with these men that on various occasions these men have taken off and have been replaced with competent men in the I. C. System?

A. I know of my own knowledge some of them have been off, yes.

Q. And the railroad service continued on with the same efficiency as it did before, didn't it?

A. Not necessarily.

Q. Do you know that it did not continue on with the same efficiency as it did before?

A. I don't know whether it did or did not. I am not an operating man.

Mr. Harris: I believe that is all.

Redirect examination.

By Mr. Evans:

Q. Mr. Munson, in all your thirty-two years of experience, did you ever hear of the superintendent, general yard-

master, master mechanic, the general car foreman, which constitutes all the officials in Memphis, being off for a week [fol. 126] or ten days at the same time?

A. No, sir.

Mr. Evans: That is all.

Mr. Harris: I object to that, of course.

Recross-examination.

By Mr. Harris:

Q. Mr. Munson, why do you think it would be necessary for the master mechanic and the superintendent to come to St. Louis in case this case is tried in St. Louis?

A. For the simple reason that knowing what proof would be made under the general declaration of this petition we would have to be prepared to meet any occasion which might arise.

Q. Does the master mechanic have any supervision over the car inspectors?

A. He has direct supervision over all men in the mechanical department, and they are in the mechanical department.

Q. And does the superintendent have direct supervision of the car inspectors?

A. Through the master mechanic.

Q. And why do you think the superintendent would be necessary to be brought to St. Louis in the case of Mrs. Miles and Robert Adams, Administrators, against the I. C. Railroad?

A. For the reasons stated, that under the things that are possible to prove under that declaration, he is the man that has charge of that entire operation; he knows the rules, regulations, and the physical layout of the property.

Q. Now, when transporting men from one point to another they ride on passes, do they not?

A. They do.

Q. In your thirty-two years as claim agent state whether [fol. 127] or not you know that the procedure is such as exists in the courts of St. Louis, the State of Missouri, that the depositions of all the witnesses whom you have mentioned it might be necessary to bring to St. Louis could be taken in Memphis, Tennessee, and transcribed and signed and filed and brought to St. Louis, Missouri?

A. Not being a lawyer, I couldn't say.

Q. Have you attended the taking of any depositions where the suit was pending in another State?

A. Yes, I taken depositions——

Q. (Interrupting): Have you ever attended the taking of depositions in other States where the suit was filed and pending in the City of St. Louis, Missouri, or in any part of Missouri?

A. The only place we had any in Missouri—I don't recall ever having taken any depositions outside of Missouri for any Missouri suit.

Q. I want to know——

A. (Interrupting): I wasn't present, as far as I recall.

Q. Do you know of your own knowledge whether or not depositions have been taken in suits pending in the State of Missouri of witnesses in other States?

A. I wouldn't know that unless they were my cases, and I have no such recollection of any case.

Mr. Harris: I think that is all.

Redirect examination.

By Mr. Evans:

Q. You say these men ride on passes. Do they have Pullman passes, Mr. Munson?

A. They do not.

Q. Mr. Munson, in attending trials during the time you have been claim agent, you have had considerable experi- [fol. 128] ence in court work and produced witnesses and so forth, have you not?

A. Arranging for the attendance, yes.

Q. Mr. Munson, has your experience taught you that in a jury trial, before a jury, a deposition amounts to practically nothing so far as carrying conviction to the jurors' minds is concerned, is that true or not?

A. That has always been my experience and observation, that a deposition is not as effective as a witness in person.

Q. Then, what have you to say as to the advisability of taking depositions in this particular case, before the defendant in this suit knows what their real ground of negligence is? Would that be practical or not?

A. I wouldn't think it would be practical or sensible.

Mr. Evans: That is all.

Mr. Harris: That is all.

(Signature waived by agreement of counsel.)

[fol. 129] J. B. HAMILTON, being produced, sworn and examined on the part of the plaintiff, deposes and says:

Direct examination.

By Mr. Evans:

Q. State your name?

A. J. B. Hamilton.

Q. Mr. Hamilton, what official position, if any, do you hold with the complainant, Illinois Central Railroad Company?

A. Superintendent.

Q. At what point?

A. Carbondale, Illinois, St. Louis Division.

Q. Is the City of St. Louis, Missouri, within your jurisdiction now?

A. No, sir.

Q. Where were you superintendent prior to the time that you were superintendent at Carbondale?

A. Chicago.

Q. Was St. Louis, Missouri, then under your jurisdiction?

A. No, sir.

Q. Has it ever been?

A. Yes, sir.

Q. When?

A. From 1935 to 1938; four years.

Q. During those four years you were superintendent East St. Louis was in your jurisdiction as superintendent, is that correct?

A. Yes, sir.

Q. Is East St. Louis now in your jurisdiction?

A. No, sir.

Q. Mr. Hamilton, during your connection with the Illinois Central Railroad Company and especially during the [fol. 130] four years at East St. Louis, Illinois, and St. Louis, Missouri, when they came within your jurisdiction, did you become familiar with the properties of the Illinois Central in St. Louis and in East St. Louis?

A. Yes, sir.

Q. Does the Illinois Central Railroad Company own any line of railroad in St. Louis or in the State of Missouri?

A. No, sir.

Mr. Harris: When you say "line", you mean rails?

Mr. Evans: I refer to trackage.

A. We do not.

By Mr. Evans:

Q. Does the Illinois Central Railroad Company own any physical properties? That is, real estate? I don't have reference, now, to box cars, but any fixed properties in the City of St. Louis or State of Missouri?

A. They do not.

Q. Tell us whether or not the Illinois Central Railroad does any business into or out of the City of St. Louis or the State of Missouri except interstate business.

A. They do not.

Q. How long, Mr. Hamilton, have you been a superintendent, approximately?

A. Twelve years.

Q. Mr. Hamilton, assume that you were a superintendent, and, of course, you have a trainmaster?

A. I have five.

Q. Well, so as not to make the question too long, you have trainmasters, general yardmasters, car foremen, master mechanics, all under your supervision?

A. That's right.

Q. Assuming, Mr. Hamilton, that the superintendent, [fol. 131] trainmaster general yard foreman, general yardmaster, yardmaster of the particular yard, trainmaster, master mechanic and general car foreman were all taken away for from four to seven days at the same time what would be the effect on the operation of the railroad?

Mr. Harris: Now, just a minute. I want to get my objection in on the ground that the hypothetical question is improper. It is irrelevant and immaterial for the reason that there is no proof or no showing made that there would be any requirement for either the number of witnesses mentioned, men mentioned by Mr. Evans as possible witnesses to attend a trial in St. Louis, Missouri, from Memphis, Tennessee; and for the further reason that there is no showing or no proof whatever as to any certain length of time that it would require to conduct the trial of the case if it was held in the City of St. Louis, Missouri.

A. May I answer?

By Mr. Evans:

Q. Yes, sir.

A. From my experience, thirty-two years, same as Fred Munson, I would say that if they were gone one day, that

personnel you mentioned, would be about like taking all the fire apparatus away from a fire house in case a fire broke out. I don't know just what would happen; it would be a serious thing.

Q. It is your view that for the men occupying these positions I have named to be taken away even for one day would be a very—have a very serious effect on the operation of the railroad?

A. Potent-ally, yes, sir, it would be risky, risking a great deal. It would be assuming that things wouldn't happen that are liable to happen any day.

Q. Mr. Hamilton, if the men occupying the positions I have named were to leave, tell us whether or not these would then be anybody left with any authority of a general nature. [fol. 132] In other words, would there be an executive officer left with those men gone?

A. No, you would have your chief clerk, secretary and down the line in that fashion as far as possible, but nobody with any executive authority or sufficient authority with ability to act in an emergency that might arise. That is what they are there for.

Q. Is it your idea that if they didn't have responsible positions they wouldn't be drawing a salary, occupying responsible places?

A. That is right.

Q. Well, now, Mr. Hamilton, tell us whether or not it would be possible to run a railroad without those officials.

A. It would not.

Mr. Harris: I wish to make an objection to that; first, a conclusion, unless Mr. Hamilton knows that they have actually tried to run it without them.

By Mr. Evans:

Q. Taking that up as a cue, did you ever hear of a railroad being operated without those officials?

A. No, but it is like trying to bake bread without a fire. I wouldn't say we have tried to run without them, but it is obvious, naturally.

Q. Is it true or not that all railroads you ever heard of have those same officials?

A. Not only every railroad, but every industry has them.

Mr. Harris: We object to Mr. Hamilton's conclusion; it is not pertinent to the issues.

Mr. Evans: Well, in answer to that, Mr. Harris, you attempted to show by Mr. Munson that it didn't make any difference whether they all went off on a vacation for two or three weeks or not, and I am trying to show it is not true.

By Mr. Evans:

Q. Now, Mr. Hamilton, about the vacation proposition, how is that worked?

[fol. 133] A. The officers only are given a vacation with pay; two weeks each year. There is no guarantee attached to that. In my own case I have gone as many as four years without a vacation. We take our vacations if and when the traffic conditions permit. The superintendent assessing the time when the trainmasters, the master mechanics and the general foremen and divisional engineer may take his vacation. They are practically all taken during the light traffic months, when things are more or less easy, but in the fall of the year and particularly during the winter we don't give vacations, because we must have the entire force, supervisory force available.

Q. In granting vacations even in dull times, do you, the trainmaster and the general yardmaster and your general car foreman and your master mechanic all go at the same time?

A. No. No, that is not permitted in any instance. When I have to go my trainmasters are all there, and when one trainmaster goes the others are there and I am there. When the master mechanic goes the car foreman is there. When the division engineer goes the assistant engineer is on duty. We don't let any two of them go at the same time.

Q. You mean by division engineer the traveling engineer?

A. Roadmaster, they used to call them.

Mr. Evans: You can take a shot at it now.

Cross-examination.

By Mr. Harris:

Q. Mr. Hamilton, if something happened to you, if you should meet with an accident and be killed, would the I. C. be able to replace your services?

A. I think they would, yes, sir.

Q. You have an assistant under you?

[fol. 134] A. I have five trainmasters, I have four general yardmasters and a car foreman, and so forth, the same as the Memphis Division.

Q. You have the same as the division at Memphis?

A. Yes, sir, that is correct.

Q. And is there a man that is called your assistant, any man who is considered more competent to fill your position than another?

A. Yes, we have in our five trainmasters, we have more important districts, and I would say that the most important man next to me is the trainmaster on the Centralia district.

Q. You are speaking of your position at Carbondale?

A. Yes, sir.

Q. I am speaking of it as a general proposition. The superintendent at Memphis, Tennessee, from your experience, would you say there is a man that could take his position and fill it competently if, in case of necessity, he should be off?

A. Yes, I would say so.

Q. And would you say the same thing applied to the general car foreman?

A. Yes.

Q. And to the trainmaster?

A. Oh, yes.

Q. And, of course, you have stated as to the superintendent?

A. Yes.

Q. And do you know from experience, Mr. Hamilton, the number of years you have been with the railroad, that very frequently or oftentimes a number of these officials are off at one time, that is, for a short time, one day or two days or three days?

A. No, I wouldn't say that.

Q. Don't you ever have meetings of any kind in which it is necessary for the officials of the various departments you [fol. 135] have mentioned to attend?

A. Oh, they are all selected after the rules of our road. They don't take them all. For instance, we have had many family dinners and what not. We had one in New Orleans and one here and one in Chicago, but in each instance they only picked one trainmaster of five, as well as myself, to attend those, and they were picked according to the advice of the superintendent; but they didn't have the whole gang and just run them all in. They didn't take them all and run them in. In other words, they didn't rob the division when they invited them in there.

Q. Now, with reference to property that the I. C. Railroad owns, you say they don't own any property, to your knowledge, in the State of Missouri?

A. That's right, yes, sir.

Q. And does that apply to all types of property?

A. Yes, sir. I will withdraw that. I don't think he put it exactly that way. I think we have a little shanty up here, the O'Fallon team track for the yard clerk. I think it is about a ten dollar shack, that is the only one I know. I think we own that little shack up there. I will tell you another thing. We don't own it, but I understand the Madison Coal Corporation owns some property around St. Louis.

Q. What does that have to do with the I. C.?

A. We bought coal for the I. C. The yard clerk stays in it, and it is just about big enough to get in and out.

Q. Are you familiar with the general offices here in St. Louis?

A. Yes, sir, I am.

Q. And do you know whether or not the Illinois Central owns the furniture in its offices?

A. I think they do, but I don't know. I wouldn't say.

[fol. 136] Q. How many places does the I. C. occupy, that is, how many floors does the I. C. occupy with their general offices in St. Louis?

A. One in the Cotton Belt Building.

Q. Do you know how many employes, generally speaking, are employed?

A. There must be about twenty-five or thirty, roughly.

Q. Do you know what officials are connected with that office?

A. Assistant traffic manager is the head man. General freight agent and assistant freight agent and commercial agent, coal traffic agent and general passenger agent, and then miscellaneous stenographers and clerks.

Q. Now, do you maintain—does the I. C. Railroad maintain freight yards in the City of St. Louis, Missouri?

A. No, sir.

Q. Do you maintain a freight house?

A. No, sir.

Q. Do you have a freight house in the City of St. Louis, Missouri, that is labeled I. C. freight house?

A. I wouldn't know that, but I know we have no freight house.

Q. Do you have what is known as a perishable freight yards?

A. No, that is the Terminal Railroad Company's track where our perishables are handled.

Q. And those tracks are leased, are they, from the Terminal Railroad Company?

A. No, sir, we pay them a switching charge for all the business in and out of there.

Q. And how about the freight house?

A. We employ the Columbia Transfer Company to handle our freight from here to the East Side where we have a freight house.

[fol. 137] Q. Where do you store your freight on this side until it is taken to East St. Louis?

A. It is stored at the Columbia Transfer Company; the same as the Nickel Plate or the Big Four.

Q. Do they have a place at Second and O'Fallon?

A. No, no.

Q. Are you familiar with the type of freight and traffic movements that originate out of St. Louis to points in different States?

A. Yes, sir.

Q. Do you know whether or not the Illinois Central operates passenger trains into the State of Missouri?

A. They do.

Q. Does the Illinois Central Railroad in operating those trains have regularly scheduled train crews?

A. Yes, sir.

Q. And is it a fact that anyone can purchase a ticket at the Union Station in the City of St. Louis, Missouri, labeled Illinois Central Railroad Company, and with that ticket board a passenger train of the Illinois Central Railroad Company manned by a crew of the Illinois Central until they reach other points that the Illinois Central covers?

A. Yes, sir.

Q. And that includes Memphis, Tennessee?

A. Yes, sir.

Q. Now, with reference to your freight, do you ship any freight out of the City of St. Louis over the I. C.?

A. Quite a lot of it, yes, sir. That is, it is taken over to East St. Louis.

Q. What I mean——

A. It originates in St. Louis.

[fol. 138] Q. Do you have any Illinois Central equipment in the way of engines or cars that picks up freight in St. Louis?

A. No, sir.

Q. How about your carload freight, how is that handled out of St. Louis?

A. That is handled from St. Louis to East St. Louis by the Terminal Railroad Association, and from there beyond. We have no freight engines of any kind coming into St. Louis.

Q. And how about passenger engines?

A. They do.

Q. Do they come into the City of St. Louis?

A. They come in from the North, not from the South. The Terminal Railroad brings all of our trains in from the South.

Q. But you do have some coming in from the North?

A. Yes.

Q. Now, carload freight, how is that handled?

A. That is trucked over to the East Side and from there it is loaded into box cars.

Q. And suppose you had half a dozen or a dozen carloads of automobiles originating in St. Louis, Missouri, how would you handle them?

A. Illinois Central cars. Those are at Bridge Junction; that is up north, or at East St. Louis, also.

Q. Do you know anything about the arrangement as to compensation to the Columbia Terminals for handling shipments from St. Louis, Missouri, to Illinois, for the Illinois Central?

A. We pay them so much a hundred rate.

Q. Now, less than carload business, how is that handled?

A. That is less than carload I am talking about. The [fol. 139] Columbia Transfer Company, they are all less than carload. The Terminal Railroad Association handles our carload business, and the Terminal are paid on a per car basis.

Q. Do you know how that tariff is quoted from St. Louis to the destination the freight is going?

A. No, no, it is quoted from the Terminal Association in St. Louis to the Illinois Central yard in East St. Louis.

Q. In case the shipper should come to the Illinois Central Railroad and make a shipment over the Illinois Central

Railroad of freight, carload freight, and ask you for a rate, would you quote that rate to him from St. Louis, Missouri?

A. Yes, sir.

Q. And how about the rate on less than carload, would you quote that to him?

A. From St. Louis.

Q. Do you know whether or not the Illinois Central Railroad pays any taxes on personal property in the State of Missouri?

A. I think not. I wouldn't know, but I think not. I have never seen—we have a statement sent out periodically showing the taxes we pay in every State, and I am sure I have never seen Missouri listed.

Q. Do you know whether the Illinois Central operates on a permit or a license in the State of Missouri?

A. Operating in and out of here?

Q. Yes.

A. Well, I presume——

Mr. Gentry: (Interrupting:) He is not asking you what you presume; what you know of your own knowledge.

A. No, I don't know.

By Mr. Harris:

Q. Now, with reference to passenger trains, I asked you with reference to leaving St. Louis, is it a fact that you can [fol. 140] also board the Illinois Central passenger trains at Memphis with a ticket sold by the Illinois Central Railroad and operated by an Illinois Central crew and stay on that train until you arrive at Union Station, St. Louis, Missouri?

A. Yes, sir.

Q. Now, the Columbia Terminals, of course, I suppose the Illinois Central has a contract with the Columbia Terminals, have they?

A. It has.

Q. They handle all their less than carload freight?

A. They handle all their less than carload freight.

Q. And do you know what interest the Illinois Central Railroad owns, if any, in the Terminal Railroad?

A. No, sir.

Q. Don't know that?

A. No, sir.

Q. Do you know whether or not any of the officials or any of the directors or stockholders of the Illinois Central Railroad are also directors or stockholders of the Terminal?

A. Yes, sir, our president, he is a director.

Q. Is he the only official that you know of that is a director, or also an official?

A. He is the only one.

Q. He is the only one?

A. Yes, sir.

Q. Do you have any freight trains pulled into the State of Missouri by the Terminal Railroad?

A. No, sir.

Q. And I believe you stated you don't bring them in with your own engines?

A. No, sir.

[fol. 141] Q. That is freight trains?

A. No, sir.

Mr. Harris: I believe that is all.

Redirect examination.

By Mr. Evans:

Q. Mr. Hamilton, you spoke of a shanty, you said it cost about ten dollars. Do you know who owns the land on which that shanty is built?

A. The Terminal Railroad Association.

Q. So the Illinois Central doesn't own any land?

A. No, sir.

Q. But for their convenience they have built this little shanty which you say costs about ten dollars?

A. Yes, sir.

Q. Who owns it, I take it would be a question for the courts to decide. Now, you referred to Bridge Junction in your testimony. In what State is Bridge Junction?

A. Illinois.

Q. And North Junction, in what State is that?

A. Illinois.

Q. You spoke of passenger trains coming in from the South. They are turned over at East St. Louis to the Terminal Association which brings them in?

A. That's right. They put their engines on.

Q. And trains from the North, you mean by that trains from Chicago?

A. Yes, sir.

Q. They come in under the power of the Illinois Central?

A. Yes, sir, they come in over the Merchants Bridge up north of here.

Q. But the Illinois Central brings in nothing from the South?

[fol. 142] A. No.

Q. But so far as less than carload lots it is turned over to the Columbia Terminals?

A. Yes, sir.

Q. And it takes it over to East St. Louis?

A. To our freight house.

Q. To your freight house and delivers it to the Illinois Central?

A. Yes, sir.

Q. If the shipper wants to ship a carload of stuff, it is delivered——

A. (Interrupting:) To the Terminal Railroad Association.

Q. And it carries it to East St. Louis, and it is turned over to the Illinois Central?

A. That is right, under their own power.

Q. Now, you were speaking about the officials in the general offices down there. You called off some officials and stenographers and what not. Tell us whether or not they are not all engaged in the solicitation of interstate business.

A. They are, because we have no intrastate business to solicit.

Q. Tell us whether or not, Mr. Hamilton, the Illinois Central Railroad Company does any intrastate business in the State of Missouri.

A. No, sir. I might add, if it is permissible here, that the office in St. Louis, our traffic office here is much the same as we have in Cleveland, Ohio, and Detroit and Jacksonville and Decatur and San Francisco and Havana.

By Mr. Harris:

Q. How about Memphis?

A. We solicit intrastate there.

By Mr. Evans:

Q. Mr. Hamilton, tell us whether or not the Illinois Central Railroad has officials and employes in towns of its [fol. 143] line for the purpose of soliciting freight.

Mr. Harris: I object to that for the reason it is incompetent, immaterial and irrelevant; doesn't tend to prove any issues involved in the case.

The Witness: We have them all over the country and in foreign countries. They have in London, England.

By Mr. Evans:

Q. Is that true of all railroads in the United States?

A. All Class A railroads. You will find several railroads here in St. Louis that are far distant from their home office that have their commercial offices soliciting business.

Mr. Harris: We object to that, of course, as being incompetent, irrelevant and immaterial.

Mr. Evans: And because it hurts.

Mr. Harris: No, I didn't say that.

By Mr. Evans:

Q. Well, Mr. Hamilton, as I understand you, the Illinois Central, except the two or three passenger trains from the North, doesn't run any engines here, but in answer to Mr. Harris' question you said the Illinois Central furnishes cars for carload shipment?

A. The Chevrolet Motor Company shipped quite a lot of parts over the Illinois Central Railroad. They place an order, that is through the Terminal Railroad Association, for our automobile cars. We will deliver a certain number of empty box cars to the Terminal Railroad Association, empty, at East St. Louis. They bring them over and spot them at the Chevrolet plant. When they are loaded the Terminal brings them over to us at East St. Louis. The Terminal Railroad Association does not have any box cars of their own. The railroads with whom they do their business have to furnish their equipment.

[fol. 144] Q. Do you know whether the Boston & Maine have any equipment here now?

A. I don't know. The Central of Georgia do.

Q. Does the Central of Georgia, even though it doesn't come this way, render the same service as if it were going to get the traffic, wouldn't it?

A. Yes, sir.

Q. Now, there is nothing, I believe, handled at the O'Fallon street except carload business, is that right?

A. That is all.

Q. Mr. Hamilton, is there anything unusual in the railroad world in the delivery and carrying and switching charge, which was incurred at the inception of the movement?

A. No, that is true all over.

Q. You are familiar, I suppose, with the conditions of Memphis. Do you know, for instance, the Union Railway?

A. Yes, sir.

Q. That is the same as your Terminal Railway, so far as switching is concerned?

A. Yes.

Q. And they make a charge of $5.00 which is absorbed by the railroads which finally gets the traffic?

A. That is right.

Mr. Evans: That is all.

Recross-examination.

By Mr. Harris:

Q. Mr. Hamilton, Mr. Evans asked you with reference to the employes employed at the office here in St. Louis, if it is not a fact that they merely solicit business. Now, they do more than solicit business, do they not?

[fol. 145] A. Furnish rates, yes, sir.

Q. In other words, they run the I. C. business which is handled in St. Louis, Missouri, here in a general way, do they not?

A. From a traffic standpoint, only. They have no real authority whatever.

Q. I mean from a traffic standpoint?

A. Yes, we have our sales force in St. Louis.

Q. You have a general passenger agent in that office?

A. Yes, sir.

Q. And he supervises the handling of passenger tickets. He oversees passenger tickets?

A. He handles everything that goes with passenger traffic.

Q. What are his duties?

A. His principal duties are to get some business for the railroad; that is his main reason for being there; and like selling some merchandise, after he has sold somebody a trip over our railroad, he wants to see that the merchandise, *after he has sold somebody a trip over our railroad, he wants to see that the merchandise* is all right, and he just

follows it up; makes his reservation for him on the train, tells him where to go and get his ticket. He don't have a thing to do with *the* operating the train. He is just a salesman.

Q. He supervises arrangements to see that the proper accommodations are given?

A. Oh, yes.

Q. And that the passenger is supplied with accommodations and things of that sort?

A. So he will come back again.

Q. Now, you have a ticket agent. Is there a ticket agent in the office?

[fol. 146] A. No, we have one down here on Broadway, but the main ticket office, of course, is down at the Union Station, and that is the Terminal Railroad Association again.

Q. Now, the general freight agent in St. Louis, what are his duties?

A. The assistant traffic manager, he is the top man.

Q. What are his duties?

A. He has charge of both freight and passenger traffic.

Q. What are his duties, if you know?

A. Principal purpose, again, was to solicit and obtain business for our line.

Q. What are some of his other duties?

A. Sees that it is followed up all right; call me up and raise hell with me to see that it gets out on time from East St. Louis.

Q. Does he have anything to do with, say, for instance, having an order for carloads of Chevrolet automobiles, seeing that they are placed to go over the Illinois Central Railroad? What are the duties of the traffic manager with reference to that?

A. Nothing except to turn it over to East St. Louis. Gets a messenger boy in between. They don't call him as a rule, though. They call the operating department at East St. Louis.

Q. Does he communicate with the Columbia Terminals, that it picks up the cars?

A. No, he just goes out there and tries to get their business, and after he has the promise of getting their business, it is up to him.

Q. You call him the general traffic manager?

A. Assistant traffic manager.

Q. Do you have a traffic manager?

A. In Chicago.

[fol. 147] Q. Here in St. Louis?

A. No, there isn't one in St. Louis.

Q. What other officer did you mention over there?

A. I mentioned assistant traffic manager, general freight agent, assistant general freight agent, commercial agent, commercial traffic agent, general passenger agent, and then a lot of trash.

Q. Now, what are the commercial agent's duties?

A. He is just about three rungs below on the ladder. The same thing that they do. All any of them do is go out and solicit business.

Q. What do you employ stenographers and secretaries for, do you know?

A. Sure, write letters to Chicago and tell how much business they have got.

Q. Do you have any rate clerks?

A. We have rate clerks, but they don't make up any. They follow the tariffs and give out the information.

Q. Those rate clerks are maintained, aren't they, for the purpose of supplying prospective customers in different parts of Missouri with the rates?

A. Oh, yes.

Q. Do you make up any bills of lading in St. Louis?

A. I don't know.

Q. You don't know that?

A. No, sir, I do not.

Q. Now, your general passenger agent, is he the one you described a while ago?

A. We have one, yes.

Q. Did you give me his duties?

A. I said he does the same thing in a passenger way that [fol. 148] the general freight agent does in the freight line.

Q. Now, you say you don't do any local business in the State of Missouri?

A. That is right.

Q. But you do hire through contract the Columbia Terminals to haul less than carload freight?

Mr. Evans: He told what that operation was. Whether that is hiring or not, that is a question of law.

By Mr. Harris:

Q. Do you know whether or not you have a contract with the Columbia Terminals?

A. Yes.

Q. And that is to pick up less than carload freight and take it to East St. Louis?

A. It is for them to pick up freight and deliver it to East St. Louis.

Q. You have an agreement with them for picking that up for the Illinois Central Railroad?

A. Yes.

Q. That is in St. Louis, Missouri?

A. That is their business, you know. They have a certificate of convenience and necessity here to engage in that business. That is not only the Illinois Central.

Q. They only handle it for the Illinois Central through the Illinois Central agreement with them?

A. As far as we are concerned.

Q. That's what I say. And all of the business, both passenger and freight business that is handled out of St. Louis and various points in other States is managed and supervised by the office force of the Illinois Central Railroad in St. Louis, Missouri?

[fol. 149] A. No. Just the selling of it is all that they supervise.

Q. Just the selling of it?

A. Selling of the service.

Q. Well, who supervised the looking after the handling of it on this side before it gets to Illinois?

A. Terminal Railroad Association.

Q. Terminal Railroad Association?

A. Terminal Railroad Association and the Columbia Terminals are responsible for anything that happens to that freight until it gets to our depot. We don't have a thing to do with it any more, if it originated at the Missouri Pacific. If there is any shortage or anything like that, they pay the shortage.

Q. But the Columbia Terminals and the Terminal Railroad only handle that on an agreement with the Illinois Central Railroad?

A. And for a charge.

Q. For a charge. You are not familiar, are you, with the full agreement with the Illinois Central, that the Illinois Central has with them?

A. No, sir.

Q. And that also applies with reference to the Terminal Railroad to their trains of freight cars or any string of

cars that they might bring into the State of Missouri, they are charged for that?

A. Yes, sir.

Q. And they are requested to handle under the agreement with the Illinois Central Railroad, to handle those specific cars?

A. Yes, sure.

Mr. Harris: I think that is all.

Redirect examination.

By Mr. Evans:

Q. Mr. Hamilton, if a man ships a carload of automobiles [fol. 150] or anything else from Memphis, Tennessee, to Denver, Colorado, over the Illinois Central, the Illinois Central quotes him a rate through to Denver and collects the entire amount, if it is prepaid, and then you pay to the delivering carrier its pro rata of that tariff?

A. That is right.

Q. If a shipment originates in St. Louis going to Chicago there is a certain freight rate that applies to that particular commodity, say it is automobiles?

A. Yes, sir.

Q. And when that is collected the Illinois Central pays to the Terminal Association, if it is a carload lot, or the Columbia Terminals Association if it is less than a carload lot, the part of the tariff that is charged for moving from here to East St. Louis?

A. That's right.

Q. The Terminal gets the tariff for moving it from St. Louis to East St. Louis?

A. Yes.

Q. And it is held out all the same, is it not?

A. Yes.

Q. And if you shipped it from Memphis to San Francisco, the same rule would apply?

A. The same as any other interchange between railroads.

Mr. Evans: That is all.

Recross-examination.

By Mr. Harris:

Q. And the tariff which the Terminal Railroad gets for handling the freight from St. Louis to East St. Louis is

[fol. 151] charged to the customer in their rates, is it not? They collect it from the customer, do they not?

A. Why, sure; from the customer, yes.

Mr. Harris: That is all.

Mr. Evans: That is all.

(Signature waived by agreement of counsel.)

STATE OF MISSOURI,
City of St. Louis, ss:

I, Fred W. Niederluecke, a Notary Public within and for the City of St. Louis, State of Missouri, certify that each of the foregoing witnesses were duly sworn by me before their depositions were taken.

My commission expires April 14, 1940.

Fred W. Niederluecke, Notary Public within and for the City of St. Louis, State of Missouri. (Seal.)

[fol. 152] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

INTERROGATORIES RE DEPOSITION OF A. E. LAWLER—Filed January 29, 1940

The interrogatories prepared and filed to take the deposition of A. E. Lawler, auditor of the Illinois Central Railroad Company of Chicago, Illinois, filed and to be taken before the Clerk of the law court or Chancery Court at Chicago, Illinois, as provided by Section 9827 of the Tennessee Code of 1932.

W. G. Cavett, H. S. Buchanan; Attorneys for Defendants.

[fol. 153] Q. 1. State your name, age, residence and present occupation.

Ans. ——

Q. 2. How long have you been auditor for the Illinois Central Railroad Company?

Ans. ——

Q. 3. I herewith hand you a time table with certain printed and written matter in which it says it is the Illinois Central Time Table for January-April, 1939, and ask you if this publication was printed by or for the Illinois Central Railroad Company at their instance, if you know and

whether or not the printing was paid by the Illinois Central Railroad Company as reflected by the records which are in your hands or to which you have access?

Ans. ——

Q. 4. Define what records you have access to as auditor.

Ans. ——

Q. 5. Please identify this publication, being No. 83, issued January 7, 1939, as Exhibit A to your deposition and mark your name across same so as to show your identification.

Ans. ——

Q. 6. Turning to pages 59, 60, 61 and 62, will you please state from the records that you have what employees the Illinois Central Railroad Company had in the State of Missouri from the first of January, 1939, to the first of April, 1939, giving their names, addresses, the amount of salaries paid by the Illinois Central to each employee as shown by the records in your possession or to which you have access.

Ans. ——

Q. 7. Please give the different pieces of property owned by the Illinois Central Railroad in the State of Missouri [fol. 154] from the first of January to the first of April, 1939, as reflected from the records in your possession or to which you have access.

Ans. ——

Q. 8. If in answer to the above question you state that the Illinois Central Railroad Company did not own any real estate at that time in the State of Missouri, state what pieces of property, if any were rented or used by the Illinois Central Railroad Company as reflected by the records in your possession or to which you have access from the first of January, 1939, to the first of April, 1939, giving the rentals paid and to whom and the date of the contracts on which rentals were made and paid.

Ans. ——

Q. 9. Have you given the names of all the employees of the Illinois Central Railroad Company that were located in the State of Missouri and especially in St. Louis, Missouri, from the first of January, 1939, to April 1, 1939?

Ans. ——

Q. 10. Was this time table published, which is heretofore referred to as Exhibit A, by contract made by the Illinois Central Railroad Company and circulated as the Illinois Central Systems publication, if you know?

Ans. ——

Q. 11. How many employees did the Illinois Central Railroad Company have from January 1, 1939, to April 1, 1939, in Missouri and what was the total amount paid to such employees as reflected by your records as auditor or to which you have access as auditor?

Ans. ——

Q. 12. What amount of business was done, both passenger and freight, at your St. Louis offices from the first of Jan-

[fol. 155] Exhibit Time Table

uary, 1939, to April 1, 1939, giving the total amounts of each paid to the Illinois Central Railroad Company for such services?

Ans. ——

Q. 13. What amount of tickets as reflected from your records were sold by the Illinois Central at its St. Louis offices from the first day of January, 1939, to the first day of April, 1939?

"14. What amount of freight was paid to the Illinois Central Railroad Company both in freight received at your office in St. Louis, Missouri, and for freight that was transmitted from St. Louis, Missouri from the first day of January, 1939, to April 1, 1939?

Ans. ——

Q. 15. What interest as shown by your records did the Illinois Central Railroad Company have in and to the Bridge Corporation over which certain trains were transported by the Illinois Central Railroad Company to and in St. Louis, Missouri?

Ans. ——

Q. 16. What tracks as shown from your records does the Illinois Central Railroad Company use in entering St. Louis, Missouri, and what arrangement as shown from your records, does the Illinois Central Railroad Company have with such corporation, association, or partnership for the use of such tracks as the Illinois Central Railroad Company uses in intering the city of St. Lous, Missouri, into the Union Station at 18th and Market Streets in the City of St. Louis?

Ans. ——

Q. 17. What interest does the Illinois Central Railroad Company have in the Union Station at 18th and Market Streets in the City of St. Louis as reflected by your records of the Illinois Central Railroad Company?

[fol. 156] Ans. ——

Q. 18. What lawyer or persons have communicated with you relative to your giving your deposition in this case, giving their names and addresses and any notes or memorandum sent to you and if no notes or memorandum, who has interviewed you personally and talked with you, if anyone, giving such persons names and addresses?

Ans. ——

Q. 19. I herew' h hand you Illinois Central Time Table or what purports to be same from November to December, 1939, and will ask you whether or not this time table was prepared, published and paid for by the Illinois Central Railroad Company as reflected by the records in your possession or to which you have access and file this as Exhibit B to your deposition by writing your name across same.

Ans. ——

Q. 20. What amount of business did the Illinois Central Railroad Company do in St. Louis, Missouri, from the first of January, 1939, to your latest date to which you have figures from which to compile same, giving the amount or receipts for income to the Illinois Central Railroad Company at St. Louis, Missouri?

Ans. ——

Q. 21. As reflected by the records in your possession or to which you have access, what interest, if any, did the Illinois Central Railroad Company have in any trucking company or corporation that transports freight to or from St. Louis, Missouri, from January 1, 1939; to April 1, 1939, and what amounts were received through such company by the Illinois Central Railroad Company?

[fol. 157] Exhibit Time Table

In the Chancery Court of Shelby County

[Title omitted]

Deposition of Andrew E. Lawler—Filed January 29, 1940

The following is a deposition of Andrew E. Lawler, General Auditor of Illinois Central Railroad Company, taken before me upon interrogatories on Thursday, the 25th day

of January, A. D. 1940, by the said witness, age fifty-four (54) years, who was first duly sworn and under oath.

Certificate

The foregoing depositions were taken before me as stated in the caption and reduced to writing before me, and I certify that I am not interested in the cause nor of kin or counsel to either of the parties; that I sealed them up and delivered them to the Post Office, without being out of my possession or altered as they were taken.

Given under my hand and seal this 25th day of January, A. D., 1940. Victor L. Schlaeger, Clerk of the Superior Court of Cook County. (Seal.)

[fol. 158] Answer to Interrogatories Propounded to Andrew E. Lawler, General Auditor, Illinois Central Railroad Company in Proceeding in the Chancery Court of Shelby County, Tenn., in Case Styled

Illinois Central Railroad Co., Complainants

vs.

Mrs. Jessie Miles, et al., Defendants

Answers are given to interrogatories by number, seriatim, without repeating the interrogatory.

Ans. to Inter. 1.

My name is Andrew E. Lawler, age 54, residence 8121 Dorchester Avenue, Chicago, Ill., and present occupation that of General Auditor of the Illinois Central Railroad Company.

Ans. to Inter. 2.

I have been General Auditor of the Illinois Central Railroad Company since January 1, 1938, with previous service in many other occupations.

Ans. to Inter. 3.

I have nothing to do with the printing of time tables. This time table appears to be Illinois Central Railroad time table No. 83, and the printing of this time table, No. 83, was paid for by the Illinois Central Railroad Company.

Ans. to Inter. 4.
All records of accounts.

Ans. to Inter. 5.
I have so identified time table No. 83 on the first sheet which is designated as pages 1 and 2.

Ans. to Inter. 6.
Of the employees listed on pages 59, 60, 61 and 62, of time [fol. 159] table No. 83 there were six employees of the Illinois Central Railroad Company located in St. Louis, Mo., namely,

G. R. Kimbel, General Passenger Agent	$1,050.00
A. L. Wilson, " Freight "	1,350.00
J. L. Sheppard, Asst. Traffic Manager	1,999.98
E. W. Betts, Dist. Passenger Agent	825.00
S. L. Springer, Asst. Genl. Frt. Agent	1,125.00
J. V. O'Dea, City Ticket Agent	630.00

Ans. to Inter. 7.
The Illinois Central Railroad Company did not own any pieces of property in the State of Missouri from the first of January to the first of April, 1939.

Ans. to Inter. 8.
The Illinois Central Railroad Company does not own any real estate in the State of Missouri, nor any tracks. The tracks of the Illinois Central Railroad Company and on the Illinois side of the river and interstate traffic, destined St. Louis, Mo., and points in the State of Missouri, is handled by the Terminal Railroad Association of St. Louis and over its facilities, including bridges across the Mississippi River, and with its own engines and crews, except that the Illinois Central Railroad Company's passenger trains to and from the North are handled by Illinois Central Railroad Company engines and crews over the facilities of the Terminal Railroad Association of St. Louis into St. Louis, Mo., as a matter of operating facility. The Illinois Central Railroad Company is one of the proprietary companies of the Terminal Railroad Association of St. Louis and owns one-sixteenth of the latter's capital Stock. The Terminal Railroad Association of St. Louis is incorporated and operates its tracks and terminal property as a separate and independent carrier. The amounts [fol. 160] paid to the Terminal Railroad Association of St.

Louis for the services performed and for the use of its property are varied, according to the traffic handled, and largely represent reimbursement of expenses incurred.

The Illinois Central Railroad Company has a traffic ticket office in St. Louis, Mo., located in the Boatman's Bank Building at 324 Broadway. This office is rented from the Superior Construction Company under a lease dated July 28, 1937, and the rentals paid from January 1, 1939, to April 1, 1939, amounted to $813.60.

The Illinois Central Railroad Company also rents space in the Cotton Belt Building for a traffic office under a lease dated September 26, 1938, from O. H. Moberly, Trustee, Planters Realty Company, and the rentals for the period from January 1, 1939, to April 1, 1939, amounted to $1,183.50.

Ans. to Inter. 10.

My answer to Interrogatory No. 6 gives the names of all those employees listed on pages 59, 60, 61 and 62 of time table No. 83 who were located in St. Louis, Mo.

Ans. to Inter. 10.

I have nothing to do with the publishing or circulation of time tables.

Ans. to Inter. 11.

The salaries of those employees of the Illinois Central Railroad Company shown on pages 59, 60, 61 and 62 of the time table No. 83 and who were located in St. Louis, Mo., amounted to $6,979.98 from January 1, 1939, to April 1, 1939.

Ans. to Inter. 12.

The total receipts of the Illinois Central Railroad Com- [fol. 161] pany reported from St. Louis, Mo., for the period January 1, 1939, to April 1, 1939, amounted to $401,059.97. This represents receipts from sale of passenger tickets and collection of freight charges for the transportation of passengers and freight by the Illinois Central Railroad Company, connecting lines, and other railroads, for which the Illinois Central Railroad Company acted as agent in collecting the charges due. These receipts are all from interstate business, none of which was local to the State of Missouri.

Ans. to Inter. 13.

Ticket sales reported to the Illinois Central Railroad Company from St. Louis, Mo., for the period January 1, 1939, to April 1, 1939, amounted to $105,354.91. These receipts represent sale of passenger tickets from St. Louis for the transportation of passengers by the Illinois Central Railroad Company, connecting lines, and other railroads for which the Illinois Central Railroad Company acted as agent in collecting the charges due, all of which was interstate business.

Ans. to Inter. 14.

Freight charges reported to the Illinois Central Railroad Company from St. Louis, Mo., for the period January 1, 1939, to April 1, 1939, amounted to $295,704.96. This represents freight charges collected at St. Louis for the transportation of freight by the Illinois Central Railroad Company, connecting lines, and other railroads for which the Illinois Central Railroad Company acted as agent in collecting the charges due, all of which business was interstate.

Ans. to Inter. 15.

The interest of the Illinois Central Railroad Company in any of the bridge corporations is the same as in that of [fol. 162] other facilities of the Terminal Railroad Association of St. Louis. The Illinois Central Railroad Company does not own any part of the bridge but does own some stock of the Terminal Railroad Association of St. Louis which is an independent corporation operating the property.

Ans. to Inter. 16.

All traffic, both passenger and freight, of the Illinois Central Railroad Company which comes into East St. Louis, Ill., is moved into St. Louis, Mo., over the tracks of the Terminal Railroad Association of St. Louis. The service in making the movement into St. Louis, Mo., is performed with engines and crews of the Terminal Railroad Association of St. Louis, except for passenger trains to and from the North. The Illinois Central Railroad Company does not own or operate any track in the State of Missouri.

Ans. to Inter. 17.

The Illinois Central Railroad Company does not own any part of the Union Station at St. Louis, Mo. The station is owned by the Terminal Railroad Association of St. Louis.

Ans. to Inter. 18.

I have had no interview with or communication from any lawyer or other person except with one of my assistants who prepared data for my use in answering these questions.

Ans. to Inter. 19.

I have nothing to do with the printing of time tables. This time table appears to be Illinois Central Railroad Company time table No. 86 and the printing of time table No. 86 was paid for by the Illinois Central Railroad Company.

Ans. to Inter. 20.

The total receipts of the Illinois Central Railroad Company from St. Louis, Mo., from January 1, 1939, to De-
[fol. 163] cember 1, 1939, amounted to $1,488,710.74. This represents receipts from the same of passenger tickets and collection of freight charges at St. Louis for the transportation of passengers and freight by the Illinois Central Railroad Company, connecting lines, and other railroads for which the Illinois Central Railroad Company acted as agent in collecting the charges due; therefore, includes amounts due to other carriers. The receipts represented interstate business as the Illinois Central Railroad Company did not handle any local or intrastate business.

Ans. to Inter. 21.

The Illinois Central Railroad Company did not have any arrangement with or interest in any trucking company or corporation to transport freight to or from St. Louis, Mo., during the period January 1, 1939, to April 1, 1939.

[fol. 164] In Chancery Court of Shelby County

[Title omitted]

Cross-Interrogatories for the Complainant—Filed January 11, 1940

Q. 1. Please state under the laws of what state the Illinois Central Railroad Company is incorporated.

A. 1.

Q. 2. Please state whether or not the Illinois Central Railroad Company has ever complied with the statutes of

the State of Missouri defining the terms and conditions upon which a foreign corporation can do business in that state.

A. 2.

Q. 3. Has the Illinois Central Railroad Company ever qualified as a foreign corporation to do business in the State of Missouri?

A. 3.

Evans, Evans & Creson, Solicitors for Complainant.

[fol. 165] ANSWER TO CROSS-INTERROGATORIES PROPOUNDED TO ANDREW E. LAWLER, GENERAL AUDITOR, ILLINOIS CENTRAL RAILROAD COMPANY IN PROCEEDING IN THE CHANCERY COURT OF SHELBY COUNTY, TENN., IN CASE STYLED

ILLINOIS CENTRAL RAILROAD COMPANY

vs.

MRS. JESSIE MILES, et al.

Answers are given to interrogatories by number, seriatim, without repeating the interrogatory.

Ans. to Cross-Inter. 1.

The Illinois Central Railroad Company is incorporated under a special act of Illinois, February 10, 1851.

Ans. to Cross-Inter. 2.

No. The Illinois Central Railroad is not doing business within the State of Missouri so as to require compliance with such statutes.

Ans. to Cross-Inter. 3.

No.

[fol. 166] CHANCERY COURT OF SHELBY COUNTY

STATE OF TENNESSEE,
Shelby County:

To Clerk of the Law Court or Chancery Court at Chicago, Illinois, Greeting:

Trusting in your fidelity and ability to examine witnesses in a matter of controversy pending in Chancery Court

aforesaid, wherein Illinois Central Railroad Co., Complainant, and Mrs. Jessie Miles et al., Defendants. We do empower you to cause to come before you A. E. Lawler, auditor of the Illinois Central Railroad Co., of Chicago, Illinois, witness in said cause.

And he being first duly sworn, diligently to examine on interrogatories hereto attached, and such examination, under your hand, send, certified, unto our said Court, to be held at the Court House in Memphis, on the first Monday in February, 1940.

Witness: Wm. M. Stanton, Clerk & Master of our said Court, at office in Memphis, the first Monday in October Term, 1939, one of the days being this January 11, 1940.

Wm. M. Stanton, Clerk & Master, by W. W. Foley, D. C. & M.

[fol. 167] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

LIST OF DECISIONS OF OTHER COURTS INTRODUCED AS EVIDENCE IN BEHALF OF DEFENDANTS—Filed February 6, 1940

Comes the defendants in this cause through their counsel of record and point out to the trial court, introduce, and read to the court the following decisions from the appellate courts of Missouri, to-wit:

(1) I. C. R. R. vs. Crain, 335 Mo. 658, 73 S. W. (2d) 786, Cert. den. Oct. 28, 1934, 293 U. S. 607, 55 Sup. Ct. 123, 79 L. ed. 698;

(2) I. C. R. R. vs. Hardin, 334 Mo. 1169, 70 S. W. (2d) 1075, cert. den. Oct. 8, 1934, 293 U. S. 574, 55 Sup. Ct. 86, 79 L. ed. 672;

(3) I. C. R. R. vs. Poe, 339 Mo. 1025, 89 S. W. (2d) 82; (rev.);

(4) I. C. R. R. vs. Poe, 335 Mo. 507, 73 S. W. (2d) 779;

[fol. 168] (5) I. C. R. R. vs. Rummels, Mo. App., 15 S. W. (2d) 363;

(6) I. C. R. R. vs. Connelly, 133 Mo. App. 310, 113 S. W. 233;

(7) I. C. R. R. vs. Connelly, 169 Mo. App. 272, 153 S. W. 79;

(8) I. C. R. R. vs. Connelly, 183 Mo. App. 408, 166 S. W. 1077;

(9) I. C. R. R. vs. Connole, Mo. App., 21 S. W. (2d) 907;
(10) I. C. R. R. vs. Evans, 389 Mo. 493, 233 S. W. 397;
(11) I. C. R. R. vs. Cass Com. Co., 193 Mo. App. 677, 186 S. W. 1136;
(12) I. C. R. R. vs. Ginnachio, 153 Mo. App. 163, 134 S. W. 129;
(13) I. C. R. R. vs. Ginnachio, 264 Mo. 516, 175 S. W. 196;
(14) I. C. R. R. vs. Haton, 335 Mo. 1186, 76 S. W. (2d) 127;
(15) I. C. R. R. vs. Henry, 319 Mo. 432, 2 S. W. (2d) 1004;
(16) I. C. R. R. vs. Hurley, 321 Mo. App. 478, 282 S. W. 97;
(17) I. C. R. R. vs. Krallman, 209 Mo. App. 266, 235 S. W. 830;
(18) I. C. R. R. vs. Lewis, 319 Mo. 233, 2 S. W. (2d) 371;
(19) I. C. R. R. vs. Lewis, Mo., 5 S. W. (2d) 122;
[fol. 169] (20) I. C. R. R. vs. Mo. Ill. Coal Co., 134 Mo. App. 405, 114 S. W. 574;
(21) I. C. R. R. vs. Harrison Tent & Awning Co., 190 Mo. App. 67, 175 S. W. 220;
(22) I. C. R. R. vs. N. K. Fairbank Co., 167 Mo. App. 286, 149 S. W. 1154;
(23) I. C. R. R. vs. R. W. Gess Com. Co., 193 Mo. App. 677, 186 S. W. 1136;
(24) I. C. R. R. vs. Saba, 337 Mo. 105, 89 S. W. (2d) 429;
(25) I. C. R. R. vs. Saffs, 218 Mo. App. 502, 279 S. W. 223;
(26) I. C. R. R. vs. Siegel, 186 Mo. App. 645;
(27) I. C. R. R. vs. Teitsort, 522 Mo. 640, 15 S. W. (2d) 779;
(28) I. C. R. R. vs. Udell, 13 Mo. App. 254.

These cases showed I. C. R. R. Co. was suable and sued in Missouri.

(2) Defendants further point out to the trial court, introduce, and read the following decisions of the Federal Court construing the Federal Employees Liability Act and defining whether or not it is equitable or that a court of equity

or chancery should enjoin a suit by an injured employee or his administ-ore from suing in any state or federal court where the defendant is found doing business and said cases are as follows, to-wit:

Schendal vs. McGee, District Judge, 300 Fed. 273, 278;
Norris vs. I. C. R. R. Co., 18 Fed. (2d) 584;
Tapp vs. B. & O. R. R., 283 Fed. 655;
(4) Connelly vs. Central R. R. Co. of N. J., 239 Fed. 632;
[fol. 170] (5) Nood vs. Del. & H. R. Co. (C. C. A.) 63 Fed. (2d) 235;
(6) So. Rwy. Co. vs. Cochran, Judge, (1932), 56 Fed. (2d) 1019;
(7) C. & O. R. R. Co. vs. Vigor, Admr., (1937 17 Fed. Supp. 692) Aff., 90 Fed. (2d) 7, cert. den. by Sup. Ct. of U. S., 58 Sup. Ct. 25, 302 U. S. 705, 82 L. ed. 545;
(8) McKnett vs. St. L. & S. R. R. R., 292 U. S. 630, 78 L. ed. 1227;
(9) Taylor vs. A. T. & S. F. R. R., (1938) 11 N. E. (2d) 610, 292 Ill. App. 457, cert. den. April 25, 1938; 58 Sup. Ct. 942, 82 L. ed. 528.

(3) Defendants further point out to the trial court, introduce, and read the following cases which show that the I. C. R. R. Co. was doing business in St. Louis, Missouri, at the time it was sued:

(1) The above 28 decisions which are set out in Section L above from the appellate court of Missouri;
(2) The case of Connecticut Life Insurance Company vs. Spratley, 99 Tenn. 322, 172 U. S. 605, 43 L. ed. 569;
(3) L. & N. R. R. Co. v. Chatters, 279 U. S. 320, 328, 73 L. ed. 713, 717;
(4) St. Louis & Southwestern R. R. Co. (Cotton Belt) vs. Alexander, 227 U. S. 218, 57 L. ed. 486, 489, Decided 1913;
[fol. 171] (5) Patent Royalties Corporation vs. Land-O'Lake Creameries (D. C. N. Y.) (1935) 11 Fed. Sup. 103;
(6) Hoch vs. Byram (1930), 180 Mich. 298, 230 N. W. 823;

(7) Woof vs. Chicago, M. & St. Paul R. R. Co. (1930) 180 Minn. 310, 230 N. W. 826.

The defendants further point out to the Chancellor, offer in evidence and read the hereinbelow named decisions of appellate state courts holding that under the Federal Employer's Liability Act it would be inequitable for a state court of equity to enjoin an injured employee, or his administrator if he died, from prosecuting a suit for such injuries as were occasioned by the employer while engaging in interstate commerce:

(1) Lancaster, Receiver, vs. Mrs. Dunn, 153 La. 1595 S. 385;
(2) Mo. Pac. R. R. Co. vs. Harden, 158 La. 889, 105 So. 2, 5;
(3) So. Pac. R. R. Co. vs. Baum, 39 N. W. 22, 38 So. (2d) 116;
(4) McConnell vs. Thompson, Trustee (C. N. E. I.) R. R. Co., 3 opinions, Sup. Ct. of Ind., 200 N. E. 96, 8 N. E. (2d) 986; 11 N. E. (2d) 183, 113 L. R. A. 429;
(5) M. K. & T. R. R. vs. Ball, 126 Kan. 745, 271 Pac. 313;
(6) Chicago, M. & St. Paul R. R. vs. McGinley, 175 Wis. 565, 185 N. W. 218;
(7) Payne, Director vs. Knapp, 197 Iowa 737, 198 N. W. 62;
(8) Lindsay vs. Wabash R. R. Co., 269 Ill. App. 152;
(9) Taylor vs. A. T. S. & F. R. R. Co.; 292 Ill. App. 457, 11 N. E. (2d) 610, cert. den. 58 Sup. Ct. [fol. 172] 842, 82 L. ed. 528;
(10) Taylor vs. So. R. R. Co., 350 Ill. 139, 182 No. E. 805;
(11) Wabash R. R. Co. vs. Lindsay, (Mo. App.), 61 S. W. (2d) 369, (see same case, Alford Admr. vs. Lindsay, 229 Mo. App. 102, 73 S. W. (2d) 277;
(12) Wolf vs. C. M. & St. Paul R. R. Co., 180 Minn. 310, 230 N. W. 826;
(13) Peterson vs. R. R. (Minn.) 244 N. W. 823.

W. G. Cavett and H. S. Buchanan, Attorneys for Defendants.

[fol. 173] IN THE CHANCERY COURT OF SHELBY COUNTY

[Title omitted]

AGREEMENT OF COUNSEL—Filed February 21, 1940

In order to save the expense incident to taking proof, it is hereby agreed as follows:

(1) On August 6, 1938, Mrs. Jessie Miles filed her petition in the Probate Court of Shelby County, Tennessee, seeking to have herself appointed Administratrix of the Estate of Paul H. Miles, Deceased. On the same day letters of administration were granted to her. She as such Administratrix filed a bond of $1,000.00 and on the same day qualified as Administratrix of the Estate of Paul H. Miles, Deceased. On November 17, 1938, Jessie Miles, as Administratrix of said Estate, filed a petition in the cause No. 40,089 R. 44, seeking the consent of the court to withdraw funds from the Estate, and seeking to close the Estate. On the same day the court entered an order, which appears in Minute Book 168, page 563, granting her petition and discharging Jessie Miles as Administratrix of the Estate of Paul H. Miles, deceased.

(2) On August 26, 1938, Jessie Miles, Administratrix of the Estate of Paul H. Miles, Deceased, by virtue of her appointment of such by the Probate Court of Shelby County, [fol. 174] Tennessee, instituted a suit against the Illinois Central Railroad Company in the Circuit Court at St. Louis, Missouri. A copy of the petition or declaration filed in said cause is attached hereto as Exhibit "A" and made a part hereof. On October 1, 1938, that suit was voluntarily dismissed by plaintiff at plaintiff's costs.

(3) On January 17, 1939, Jessie Miles as the widow of Paul H. Miles, deceased, executed a power of attorney appointing Robert R. Adams as her attorney-in-fact, and authorizing him to cause an administrator of the Estate of Paul H. Miles to be appointed in the City of St. Louis "for the purpose of bringing a suit in the Circuit court of the City of St. Louis on behalf of the administrator against the Illinois Central Railroad Company" for the wrongful death of Paul H. Miles. On January 20, 1939, a petition was filed in the Probate Court at St. Louis seeking the appointment of Robert R. Adams as Administrator of the Estate of Paul

H. Miles, Deceased, in accordance with the aforementioned power of attorney. On the same day Robert R. Adams was appointed by the Probate Court at St. Louis Administrator of the Estate of Paul H. Miles, Deceased, and on said date he qualified as such Administrator and has since been acting as such.

(4) On January 20, 1939, Robert R. Adams as Administrator of the Estate of Paul H. Miles, instituted a suit in the Circuit Court in the City of St. Louis against the Illinois Central Railroad Company to recover damages for the wrongful death of Paul H. Miles. A copy of the petition or declaration filed in said cause has heretofore been made an exhibit to the testimony of F. F. Munson and filed in this cause, but the same is hereby made a part hereof. On February 10, 1939, on the application of the defendant, defendant was granted 20 days additional time in which to plead. Said cause is still pending.

[fol. 175] If this cause reaches the Supreme Court of Tennessee either party may refer to the certified copies of record of Mo. proceedings in the former record.

Evans, Evans & Creson, Solicitors for Complainant;
W. G. Cavett, Atty., Solicitor for Defendant.

[fol. 176] EXHIBIT "A" TO AGREEMENT OF COUNSEL

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, SEPTEMBER TERM, 1938

JESSIE MILES, Administratrix of the Estate of Paul H. Miles, Deceased, Plaintiff,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, a Corporation, Defendant

Petition

Plaintiff states that she is and at all the times hereinafter mentioned was the duly appointed and acting administratrix of the estate of Paul H. Miles, Deceased, under and by virtue of an order of the Probate Court of Shelby County, State of Tennessee, and by virtue of said order so appointing her she is and at all the times hereinafter mentioned was

empowered and authorized to institute this action, and that she has duly qualified as administratrix of said estate.

Plaintiff states that the defendant is and at all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of law with an office and place of business located in the City of St. Louis, Missouri, and is and at all the times hereinafter mentioned was a common carrier for hire by railroad of freight and passengers in interstate commerce.

[fol. 177] Plaintiff for her cause of action states that on or about the 5th day of June, 1938, Paul H. Miles, Deceased, was employed by the defendant as a car inspector in what is known as the Nonconnah Yards, and more particularly while engaged in inspecting a cut of cars in the yards aforesaid, and as a direct and proximate result of the negligence and carelessness of the defendant, by and through its agents, servants and employees, said Paul H. Miles was caused to be run over and to sustain injuries of such severity that he died as a direct result thereof.

Plaintiff further states that at the time herein mentioned the said Paul H. Miles was engaged in work directly in furtherance of interstate commerce in that said cars in the train aforesaid contained shipments of freight in interstate commerce, and that certain of said cars were en route to points outside of the State of Tennessee, to-wit, to points in the State of Kentucky,

Wherefore, plaintiff prays judgment against the defendant in the sum of $45,000.00, together with the costs of this action.

(Signed) Louis E. Miller and Robert Harris, Attorneys for Plaintiff.

[fol. 178] In the Chancery Court of Shelby County

No. 43,282 R. D.

Illinois Central Railroad Company

vs.

Mrs. Jessie Miles, Administratrix

Final Decree and Order Allowing Appeal—Entered February 26, 1940

This cause came on this day to be heard on the original and supplemental bills herein, the demurrer of defendants

and the answer of defendants thereto, all the evidence filed in the cause, including stipulations of counsel and consideration of cases pointed out and read to the court, and on the whole record herein, and after argument of counsel and consideration thereof, the court finds as a fact that complainant Illinois Central Railroad Company at the time of the filing of the original bill herein, was doing business in the State of Missouri and has continued to do business in the State of Missouri since that time; and the court further finds that the prosecution of the case of R. R. Adams, Administrator of the Estate of Paul H. Miles, Deceased, vs. Illinois Central Railroad Company, now pending in the City of St. Louis, will be oppressive and inequitable to complainant and a burden on the commerce and business of the complainant; and the court is of the opinion that complainant is not entitled to have made perpetual the temporary injunction heretofore issued in this cause, and since that is the only relief sought in the bills the court is of the opinion that this cause should be dismissed at the cost of complain-[fol. 179] ant; but the court is further of the opinion that in the exercise of its discretion the temporary injunction should remain in effect during the pendency of an appeal in the event an appeal herein is perfected by complainant;

It Is Therefore Ordered, Adjudged and Decreed that this cause be, and the same is hereby dismissed at the cost of complainant and Thos. A. Evans, surety on its cost bond, for which costs execution may issue;.

But it Is Further Ordered, Adjudged and Decreed that the temporary injunction heretofore issued in this cause shall remain in full force and effect during the pendency of any appeal from this decree.

From all which decree except the part thereof containing in force the temporary injunction heretofore issued, complainant excepts and prays an appeal to the next term of the Court of Appeals, which appeal is granted upon complainant filing a cost bond in the sum of $250.00, conditioned as required by law.

To the action in praying an appeal to the Court of Appeals defendants except.

O. K.

W. G. Cavett, Evans, Evans & Creson, Sol. for Complts.

[fol. 180] IN THE CHANCERY COURT OF SHELBY COUNTY

STIPULATION OF COUNSEL RE EXHIBITS—Filed March 15, 1940

It is agreed by and between counsel representing both complainant and defendant that the Clerk in making up the record may attach thereto all original exhibits to the pleadings and to the testimony.

Evans, Evans & Creson, Solicitors for Complainant.
W. G. Cavett, Solicitor for Defendant.

[fol. 181] Cost Bond on Appeal for $250.00 omitted in printing.

[fol. 182] Cost Bill omitted in printing.

[fol. 183] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 184] IN THE COURT OF APPEALS OF TENNESSEE

No. 15

Shelby Chancery

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,

vs.

JESSIE MILES, Administratrix, Appellee

ASSIGNMENTS OF ERROR ON BEHALF OF APPELLANT

The Court erred in dismissing complainant's bill, because:

(1) The evidence showed that the prosecution of the suit of R. R. Adams, Administrator, vs. Illinois Central Railroad Company in the Circuit Court of the City of St. Louis would result in hardship, oppression, injustice and an

unnecessary and unconscionable burden on the defendant, and that it would amount to a denial of justice.

(2) Since the foregoing facts are made to appear, the prosecution of the suit should be enjoined even though the evidence further showed that the defendant was doing business in St. Louis.

Respectfully submitted, Evans, Evans & Creson, Solicitors for Appellant. C. H. McKay, Lucius E. Burch, Jr., of Counsel.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 185] IN THE COURT OF APPEALS OF TENNESSEE

[Title omitted]

OPINION—Filed July 1, 1940

This case has heretofore been before the Supreme Court on a discretionary appeal granted by the Chancellor from a decree overruling a demurrer to the original and amended bill. In an opinion for publication the decree of the Chancellor was modified and affirmed, the case being remanded for proof upon a material issue hereinafter to be noted. See: Illinois Central R. Co. vs. Miles, 174 Tenn. 676. This was had and a trial resulted in the dismissal of the bill. Complainant appealed.

The nature of the case is clearly and concisely stated by the Chief Justice in the opinion upon the former appeal. We quote so much thereof as is material to any question before us:

"The original bill was filed by the Illinois Central Railroad Company, a common carrier with lines traversing several States and having an office, depot, yards, etc., at Memphis, to enjoin a suit brought by Mrs. Jessie Miles, administratrix of the estate of her husband, Paul H. Miles, in a circuit court at Saint Louis, Missouri. It appeared from the allegations of the bill that the deceased was accidentally killed at Memphis while in the service of the complainant Railroad Company. That he was a resident of [fol. 186] Tennessee and that his wife qualified as admin-

istratrix in the probate court at Memphis. It was averred that the complainant's lines did not enter the State of Missouri, 'that all the agents and servants of the complainant who reside in Saint Louis, Missouri, are engaged in interstate commerce, and that complainant does no business into or out of Saint Louis, or into or out of the State of Missouri, except interstate commerce.' It was further alleged that a defense of the suit brought by the administratrix as aforesaid would necessitate the transportation of many witnesses from Memphis to Saint Louis, that numbers of these witnesses were employees of complainant Railroad Company, that it could not compel the attendance of necessary witnesses at a trial in Saint Louis, and that the transportation of its employees to testify at Saint Louis would disrupt its service, and that a trial of this case at Saint Louis would put the complainant to great inconvenience and expense and would be an undue burden on interstate commerce.

"An injunction was issued on this bill as prayed and served on the defendant administratrix. She seems to have ignored the bill, making no appearance thereto in the chancery court at Memphis. Shortly thereafter, however, she dismissed her suit at Saint Louis, resigned her appointment as administratrix by the probate court of Shelby County, and executed a power of attorney, under which another administrator was appointed for her husband's estate by a probate court in Saint Louis. The Missouri administrator thereupon brought suit in a circuit court at Saint Louis upon the same cause of action.

"Thereupon the complainant Railroad Company filed an amended and supplemental bill, referring to and adopting [fol. 187] the allegations of the original bill, stating things done in the matter since the filing of the original bill, as outlined above, and making two daughters of the deceased parties defendant. It appeared from an exhibit to the bill that the Missouri administrator had named these two daughters, as well as the widow, as beneficiaries of the suit there. The prayer of the bill, to cut it short and state the substance, was for an injunction against the wife and daughtors of the deceased to restrain them from aiding and abetting in the prosecution of the suit at Saint Louis brought by the Missouri administrator. An injunction was granted as prayed."

When the case was before the Supreme Court it was contended by the complainant that the relief sought was justified by the opinion in L. & N. R. Co. vs. Ragan, 172 Tenn. 593.

The defendants especially relied upon that provision of the Federal Employers' Liability Act providing for the venue of actions brought thereunder. This section (45 U. S. C. A., section 56) provides:

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action."

After pointing out that this section was not relied upon in the Ragan case, there having been no reference thereto in either the brief or the argument, the Court nevertheless declined to decide the effect of that section upon the rule announced in that case as applied to the facts charged in the bill for the reason that

[fol. 188] "We do not find sufficient facts stated in the bills to justify the conclusion that the complainant is doing business in Missouri within the meaning of the Federal Employers' Liability Act, nor do we find such facts in any of the exhibits to those pleadings. • • •

"For the reasons thus indicated, we are not willing to dispose of this case on demurrer but prefer an answer developing all facts as to the nature of the complainant's business in Missouri."

Upon the remand the defendants filed an answer, incorporating therein their demurrer in accordance with the leave granted by the Supreme Court so to do. The answer raised the same questions raised by the demurrer and the position taken therein by the defendants may be generally described as that the defendants had been guilty of no conduct and intended no act that would justify the relief sought.

Proof was taken and a trial was had, with the result above stated.

The Chancellor expressly found that the complainant was doing business in the State of Missouri at the time the original bill was filed and has continued to do business in that State since that time and the complainant does not challenge the correctness of that finding.

The Chancellor also expressly found "that the prosecution of the case of R. R. Adams, Administrator of the estate of Paul H. Miles, deceased, vs. Illinois Central Railroad Company, now pending in the City of St. Louis, will be oppressive and inequitable to the complainant and a burden on the commerce and business of the complainant, etc.," and [fol. 189] the defendants do not challenge the correctness of this finding.

In dismissing the bill, which he did notwithstanding the last mentioned finding, evidently upon the theory that the venue provision of the Federal Employers' Liability Act, hereinabove quoted, required such a course, the Chancellor provided that "the temporary injunction should remain in effect during the pendency of an appeal in the event an appeal herein is perfected by the complainant."

It is important to note in the outset that the complainant has expressly abandoned the contention originally made that it is entitled to the relief sought on the theory that the prosecution of the suit in St. Louis was a burden on interstate commerce.

Its sole contention upon the present appeal is that, quite apart from the question of whether they constituted an unwarranted burden on interstate commerce, the facts charged in the bill, proven on the trial and found by the Chancellor show an intended course of conduct on the part of the defendants that would be so oppressive and unconscionable that a court of equity, in the exercise of its inherent powers, will grant the injunctive relief sought.

Apart from the effect of the venue provision of the Federal Employers' Liability Act above quoted, it is universally conceded that a court of equity has, upon a proper showing, the power to enjoin a defendant within its jurisdiction from instituting or prosecuting an action in the courts of another state.

The principle underlying this general rule is stated in 14 R. C. L. 413, to be as follows:

"The jurisdiction rests on the authority vested in courts of equity over persons within the limits of their jurisdic- [fol. 190] tion, to restrain them from doing inequitable acts to the wrong and injury of others and on the power of the state to compel its own citizens to respect its laws, even beyond its own territorial limits. The court proceeds on the theory that as long as a citizen belongs to a state, he owes it obedience; and, that as between states, the state in

which he is domiciled has jurisdiction over his person, and his personal relations to other citizens of the state. In the exercise of this power there is no attempt to render the foreign tribunal subject to the control or direction of the local court or to, in any way, exercise a supervisory power over it. There is a clear distinction between an injunction against the proceedings of a court in another state, and the power and authority of such court and one to restrain the personal action of a citizen. In the first case the court has no jurisdiction, while in the other it proceeds in personam against the defendant, directing him to proceed no further in the action, without regard to the fact that the res of the controversy may be outside of the territorial jurisdiction of the court, for in such a case the court has the power to compel a party to do all the things necessary according to the lex loci rei sitae which he could do voluntarily to give full effect to the decree against him."

Our own cases are in accord. American Express Co. vs. Fox, 135 Tenn. 489; American National Bank vs. Guardian Life Ins. Co., 172 Tenn. 547; L. & N. R. Co. vs. Miles, supra.

As above stated, the finding of the Chancellor to the effect that the prosecution of the suit in St. Louis would be oppressive and inequitable is not challenged by the defendants. Indeed, it was so adjudged by the Supreme Court upon the [fol. 191] former appeal, the Court saying

"With section 56, 45 U. S. C. A., out of the way, a suit like the one here sought to be enjoined in a foreign jurisdiction is oppressive, a burden on commerce, and justifies relief by injunction. When, however, section 56 is interposed and we are asked to relieve a carrier of a burden sanctioned by Congress, the question requires more consideration. This question is reversed (reserved)."

In the circumstances stated, we are bound to and do accept as correct the conclusion reached by the Chancellor with respect to the oppressive and inequitable effect of the prosecution of the suit sought to be enjoined. The question for decision, therefore, is whether, since the complainant is doing business in St. Louis, Missouri, the place where that suit is pending, the venue provision of the Federal Employers' Liability Act prevents a court of equity from restraining citizens of this State from pursuing an oppressive and inequitable course of conduct against another in the courts of a sister State.

In the last analysis, the contention of the defendants necessarily is that the right granted by Congress to bring an action under the Federal Employers Liability Act in a state court located in any district "in which the defendants shall be doing business at the time of commencing such action" is an absolute right, of which the courts have no power to deprive a litigant, even though the prosecution of that action at such a place would be oppressive, unjust and inequitable within the meaning of the rule by virtue of which a court of equity would otherwise have the jurisdiction and power to grant relief against such conduct. In support of their contention, the defendants have favored [fol. 192] us with an able and exhaustive brief dealing with fundamental aspects of the question and containing a comprehensive analysis of all of the authorities pro and con that they deem pertinent to various phases of the inquiry that are discussed. We have examined all of these cases to which we have had access but we think it would serve no useful purpose to undertake herein a detailed discussion of the many that are cited. Indeed, most of those regarded as in point upon the determinative inquiry are fully reviewed in the opinion of the Supreme Court upon the former appeal and it would be presumptious and useless for this Court to undertake to cover the same ground.

In deference, however, to the very able and earnest manner in which the matter has been presented, we set forth briefly our views with respect to certain of the authorities that seem to be those chiefly relied upon. The first is Conally vs. Central R. Co. of New Jersey, 238 Fed. 932, 934. The only question decided in that case was whether the defendant was doing business in the Southern District of New York within the meaning of the venue provision of the Federal Employers' Liability Act. In Trapp vs. B. & O. R. Co., 283 Fed. 655, the Court did not have for consideration the question with which we are confronted. It decided only that mere inconvenience arising from permitting actions to be brought in one place when the plaintiff and all of the witnesses on both sides resided in another, presented a question for action by Congress and not by the courts. There was no contention that the conduct there involved was oppressive or inequitable within the meaning of the rule invoked by the defendants in the instant case. However, the chief question decided in the Trapp case was that the jurisdiction of the Federal Court in an action

under the Employers' Liability Act was not dependent upon [fol. 193] the existence of state courts within the Districts having concurrent jurisdiction. The case of C. M. & St. P. R. Co. vs. Schendell, 292 Fed. 326, turned upon the validity of a statute of Iowa making it unlawful for any person "with the intent or for the purpose of instituting a suit thereon outside of this state" to solicit the business of collecting any claim for damages for personal injuries sustained within that state or for death resulting therefrom or in any way to promote the prosecution of such suit "in cases where such right of action rests in a resident of this state or his legal representative" and is against another subject to personal service within that state.

The Act was held invalid as applied to the facts of the case before the Court on the ground that it deprived a citizen of Iowa of a right absolute in nature granted by Congress to bring a suit under the Employers' Liability Act in a Federal court of the District in which the defendant was doing business.

That case might very well be distinguished from the one at bar in that the effort there was one on the part of a state court to interfere with the jurisdiction conferred by the Federal Employers' Liability Act on a Federal District Court, whereas, the effort here is directed at a suit in another state court.

The distinction is pointed out in McConnell vs. Thompson (Ind.), 11 N. E. (2d) 183, 113 A. L. R. 1429.

However, that the question we have for decision was not passed upon in the Schendell case is demonstrated by the following from the opinion: "We do not feel called upon to discuss the cases cited where the courts have held that equity may enjoin a citizen of one state in bringing actions in other jurisdictions. They do not apply to this situation. We are satisfied that the order was not issued on equitable [fol. 194] grounds of oppression or hardship but on the ground that the public policy of the state was being violated."

We may note in passing that the Circuit Court of Appeals 2d Circuit, in Bryant vs. Atlantic Coast Line R. Co., 92 Fed. (2d) 569, on facts that "were on all fours" with that case, found itself unable to agree with the decision of the Eighth Circuit in the Schendell case.

The decision in the case of Schendell vs. McGee, 300 Fed. 273, was based upon the proposition that Congress had not

given the courts the right to exercise discretion as to whether a case should be prosecuted because the same might be a burden on interstate commerce. The rationale of that decision and others of a similar nature is that since Congress has exclusive jurisdiction over interstate commerce, it can place upon it any burden that it desires.

As above pointed out, we are not concerned upon the present appeal with the theory that the conduct complained of was burden on interstate commerce.

Wood vs. Railroad Co., 63 Fed. (2d) 235, turned upon the same proposition with respect to the effect upon interstate commerce of the conduct therein involved.

It is perhaps accurate to say that among the Federal cases cited the defendants rely chiefly upon those of Southern Railway Co. vs. Cochran, 56 Fed. (2d) 1019, and C. & O. R. Co. vs. Vigor, 90 Fed. (2d) 7, both decided by the Circuit Court of Appeals for the Sixth Circuit.

In the Cochran case the suit was filed under the Federal Employers' Liability Act in the United States District Court for the Eastern District of Kentucky. The defendant filed an original petition in the Circuit Court of [fol. 195] Appeals praying for a writ of prohibition directed to the District Judge prohibiting him from trying the case. The grounds of the relief were that the plaintiff in the suit resided in South Carolina where the accident occurred and where all the witnesses lived; that the defendant Railway was a Virginia corporation which would be obliged to transport about 15 witnesses some 417 miles and maintain them at the place of the trial at a cost of about $2000.00; that the Railway's witnesses were employed in interstate commerce and that their absence from the place of their employment would place a burden on and unduly interfere with interstate commerce.

The Court denied the relief and the sole ground upon which it did so is indicated by the following:

"Jurisdiction is here asserted by a court of the United States under the mandate of a federal statute. It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction upon a federal court is to place a burden upon interstate commerce, the power for that purpose exists, and the remedy is legislative and not judicial."

That the decision in that case was controlled by the fact that Congress had full power to burden interstate commerce and, hence, relief of the character sought could not be granted on the theory that the conduct complained of was an unreasonable burden on such traffic, is clearly made to appear by the decision of the same court in the subsequent case of C. & O. R. Co. vs. Vigor, supra. That was a suit filed in the District Court of the United States for the Southern District of Ohio to enjoin the prosecution of a suit under the Employers' Liability Act in the United States District Court for the Northern District of Indiana. [fol. 196] The grounds for the injunction were alleged inequitable conduct on the part of the defendant and imposition of an unconscionable hardship upon the plaintiff in the institution and prosecution of the action. The District Judge denied the relief. The Circuit Court of Appeals affirmed this action on the ground that the facts shown were not sufficient to warrant the application of the rule invoked by the complainant, saying "we find no fact alleged in the bill or set forth in the supporting affidavit that would justify us in saying that the trial of the cause in the Indiana court would case an unreasonable burden on the plaintiff or would give to the defendant an inequitable advantage."

It is fairly implied that a contrary result would have been reached had the facts proven warranted the conclusion that the conduct complained of was unconscionable, unjust and inequitable as contemplated by the head of equity jurisprudence under which the complainant in the instant case is proceeding.

The defendants also rely upon a number of state cases, most, if not all of which, although they deny the relief sought because of insufficiency of the evidence, recognize the soundness of the principle invoked by the complainants and its applicability to a proper state of facts. It is very earnestly insisted that the Indiana court in McConnell vs. Thompson, supra, and the Iowa court in Payne vs. Knapp, 198 N. W. 62, reversed previous decisions supporting complainant's contention and adopted the view urged by the defendants. We think this is a misconception of those cases.

As above pointed out, the Court in the McConnell case made a distinction between the right of a state court to enjoin a citizen from instituting an action in a District

Court of the United States under the Federal Employers' Liability Act and the right to grant such relief against [fol. 197] the prosecution of such an action in the courts of another state, holding that Congress could not confer upon a citizen of a state a federal right to prosecute in a state court of another state a cause of action arising in that state under the Employers' Liability Act, but that it could confer and had conferred a federal right to maintain an action under the Act in federal court of any District in which the defendant was doing business and that this right was beyond the power of a state court to impair.

Moreover, the conclusion there reached seems to be in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in Bryant vs. Coast Line R. Co., supra.

The case of Payne vs. Knapp, supra, merely followed the decision of the United States Circuit Court of Appeals for the Eighth Circuit in the Schendell case, supra, holding that in view of the federal decisions the Iowa Act there under consideration could not "operate to prevent one claiming under the Federal Employers' Liability Act from bringing suit in any court, where, under that Act, he is authorized to sue". So far from overruling previous decisions applying the rule invoked by the complainant in the present case, the Court expressly recognized the applicability of that rule in a proper case, saying, "Conceding that, without regard to the state statute, the general right to bring a transitory action in any court, whether foreign or domestic, having jurisdiction of the persons and subject-matter, is, nevertheless, subject to equitable supervision, in a proper case, to prevent fraud, undue hardship, or oppression, we think the record in this case does not warrant such an interference."

But it is needless for this court to further discuss the cases cited by the defendant. It is sufficient to say that in our opinion none of them hold that the venue provisions of [fol. 198] the Federal Employers' Liability Act deprive a court of equity of its inherent jurisdiction to relieve against oppressive and unconscionable conduct on the part of one of its citizens toward another in the form of a suit prosecuted in the courts of another state under the provisions of that Act. In some of the cases in which relief of the nature here sought is denied the sole contention was that

the conduct complained of was a burden on interstate commerce. We have already referred to one or two of this class and the reason for the conclusions there reached. In other instances where relief was sought under the inherent jurisdiction of a court of equity to prevent inequitable conduct, and denied, the reason for the denial of relief has been that the facts proven were insufficient to warrant the application of the rule invoked. In these, however, the courts recognized the power of a court of equity to grant the relief in a proper case. To this class belong the cases of Payne vs. Knapp, supra; Peterson vs. Railroad Co., (Iowa), 244 N. W. 823; Alspaugh vs. Railroad Co., (Ind. App.) 188 N. E.; Wabash Railroad Co. vs. Lindsey, 269 Ill. App. 152; Taylor vs. Railroad Co., (Ill. App.), 11 N. E. (2d) 610; Southern Pacific Co. vs. Vaughn, (N. M.), 38 Pac. (2d) 1106, and Lancaster vs. Dunn, (La.), 95 So. 385; all cited by the defendants.

With reference to the decisions of the Supreme Court of the United States, to which the defendants refer, it is sufficient to point out that most, if not all of these were fully reviewed by the Supreme Court in its opinion upon the former appeal, following which discussion the Court said: "We find no decision of the Supreme Court of the United States ruling that a state court is without authority to enjoin a suit by one of its citizens in a foreign state, the facts justifying the relief, even though that suit be brought under the Federal Employers' Liability Act."

[fol. 199] The Court thereupon pointed out that to the contrary a petition for a writ of certiorari had been denied in the case of Ex Parte Crandall, (7th Cir.), 53 Fed. (2d) 969, and that case decides the question that is before us in the case at bar.

In cases involving rights granted by federal statutes it is, of course, the duty of the state courts to follow the federal decisions, if there be any upon the subject. This being true, we see no escape, so far as this court is concerned, from the conclusion that the Crandall case, being directly in point, is controlling in the disposition of the question before us. It is not necessary to set forth in detail how the question arose in that case. The Court there had under consideration the precise question with which we are confronted, namely, whether the venue provision of the Federal Employers' Liability Act placed the right to sue a

defendant in any state court located in a district wherein the defendant was doing business beyond the reach of the inherent power of a court of equity to restrain one of its citizens from the assertion of that right in the courts of another state in an oppressive and unconscionable manner. In deciding this question, the Circuit Court of Appeals, after pointing out that it was a well-recognized subject of equity jurisprudence to, under a proper state of facts, enjoin the beginning or prosecution of suits in the courts of another state, the Court saying:

"The general right of Indiana citizens to begin actions of this nature, wherever service of process on the defendant could be had, was always potentially qualified by the jurisdiction of equity to restrain the citizen from commencing the action in a foreign jurisdiction where to do so would unreasonably, inequitably, and unfairly harass, oppress, or defraud the defendant.

[fol. 200] "The Federal Employers' Liability Act does not assume to remove this qualification, and in our judgment does not exempt the citizen from invocation against him of this equitable jurisdiction under facts which would in general justify its application."

It is also interesting to note that the Court, in conclusion, said that "for further discussion we refer, with approval, to Judge Evans' opinion. (D. C.), 52 Fed. (2d) 650."

In a well-reasoned opinion disposing of the case in the District Court, Circuit Judge Evans distinguishes a number of the cases relied upon by the defendants in this case.

See also: Bryant vs. A. C. L. R. Co. supra, and Roberts on Federal Liability of Carriers, Vol. 2, Sec. 962.

Numerous cases supporting the view above indicated are collected in the notes appearing in 85 A. L. R. 1351, and 113 A. L. R. 1444.

The latest case dealing with the question is that of Baltimore & O. R. Co. vs. Bole, 31 F. Supp. 221, decided February 5, 1940, by the United States District Court for the Northern District of West Virginia, and published in the advance sheets of March 18, 1940, of the Federal Supplement. That was a suit by the Railroad Company against Eliza Tarry Bole, Administratrix of the estate of William J. Bole Jr., deceased, to enjoin her from prosecuting a civil action arising under the Federal Employers' Liability

Act that she had instituted against the Railroad Company in the District Court of the United States for the Northern District of Indiana. The grounds upon which the injunction was sought are substantially the same as those in the present case. After finding the facts to be in accordance with the complainant's contention, the District Judge awarded the injunction. In so doing he decided the precise question with which we are confronted, as is apparent [fol. 201] from the following part of his opinion stating his "conclusions of law and his reasons for the issuance of the order of injunction" hereinafter awarded:

"A Court of general equity jurisdiction has the power to restrain persons residing within its territorial jurisdiction from exercising a purely legal right in an unjust and inequitable manner in a foreign jurisdiction.

"Annoying, vexatious and harassing litigation inequitably instituted in a distant forum is recognized as one of the grounds for the exercise of equitable jurisdiction for injunction.

"The venue section of the Federal Employers' Liability Act, 45 U. S. C. A., Sec. 56, as amended, 45 U. S. C. A., Sec. 56, was not intended to, and does not, limit the equitable jurisdiction invoked by the plaintiff in this civil action."

As above pointed out, in view of the fact that the finding of the Chancellor is not questioned, we are bound to assume in the instant case that the prosecution of the suit in St. Louis amounted, or would amount, to oppressive or unconscionable conduct. This being true, the contention of the defendants in the final analysis amounts simply to this: That by the venue provision of the Federal Employers' Liability Act Congress placed the stamp of its approval on oppressive and unconscionable conduct, taking it out of the realm of prohibited acts and placing it on an equality with equitable conduct, thus destroying pro tanto the equitable powers of both the state and federal courts. Before we could attribute to the Congress an intention to work so radical and so drastic a change in one of the basic and inherent powers of a court of equity, recognized for hundreds of years, we would have to find warrant for so doing in language that left no reasonable doubt about the matter. [fol. 202] In our opinion, there is no such language in the venue provision of the Federal Employers' Liability Act. We are bound to assume, of course, that Congress was aware of this fundamental and long-established authority

of a court of equity, and this being true, if it had intended to impair or destroy that power, surely, being also aware of the drastic nature of such action, it would have expressed itself in terms of the utmost clarity. The importance of the matter demanded that it be not left to implication.

So far as we are aware, it has never been thought necessary to expressly provide in a statute granting a right that should not be pursued in an oppressive or unconscionable manner, that is, that the right granted was subject to the qualification that it should not be asserted in the manner contemplated by that long established head of equity jurisprudence under which equity grants relief against conduct that is oppressive, inequitable and unjust. Upon the other hand, the qualification has been taken for granted as having so obviously intended, that it was unnecessary to so expressly state.

If, as pointed out in a number of cases above cited, the venue provision of the Federal Employers' Liability Act added nothing to the existing law with respect to the right of a claimant under that Act to sue a defendant wherever it was doing business, in our opinion it ought not to be held that it added the right to pursue the remedy in an oppressive and unconscionable manner.

The result is that we think the Chancellor erred in dismissing the bill and in declining to grant the relief sought. [fol. 203] The decree in that respect will be reversed and a decree will be entered here making permanent the temporary injunction granted by the Chancellor. The costs of the cause, including the costs of the appeal, will be paid by the defendants.

(Signed) Anderson, Judge.

Clerk's Certificate to foregoing opinion omitted in printing.

[fol. 204] IN THE COURT OF APPEALS OF TENNESSEE

Shelby Equity

ILLINOIS CENTRAL RAILROAD CO.

vs.

JESSIE MILES, Administratrix, et al.

DECREE—July 1, 1940

This cause came on to be heard on the transcript of the record from the Chancery Court of Shelby County, briefs

of appellant and appellees and argument of counsel, upon consideration of which the Court is of the opinion that there was error in the action of the Court in dismissing complainant's bill and not making permanent the temporary injunction issued by the Chancery Court and that the assignments of error should be sustained;

It is therefore ordered, adjudged and decreed by the Court that the decree of the Chancery Court be, and the same is hereby reversed and appellant's assignments of error are hereby sustained, and that the temporary injunction issued upon the filing of the original bill and also the temporary injunction issued upon the filing of the amended and supplemental bill be, and the same are hereby made permanent. The costs of this cause in this Court, including the costs of appeal and the costs in the Court below, will be paid by appellees and the sureties on their bonds.

Clerk's Certificate to foregoing decree omitted in printing.

[fol. 205] IN SUPREME COURT OF TENNESSEE

FOUR ASSIGNMENTS OF ERROR MADE BY MRS. MILES AND HER DAUGHTERS IN PETITION FOR CERTIORARI TO THE SUPREME COURT

First Assignment of Error

The Court of Appeals committed grevious error by assuming jurisdiction in this case over the objection of Mrs. Miles et al., and should have sustained the motion filed April 26, 1940, to transfer this cause to the Supreme Court at Nashville because Sec. 10618 of the Code of 1932 provided that any cause of action appealed to the wrong court should be transferred to the court having jurisdiction thereof direct.

In said motion it is pointed out to this court, as it was to that court, that Sec. 10618 of the Code of 1932 provided that the jurisdiction of the Court of Appeals shall

"Extend to all civil cases except those involving Constitutional questions".

And this involved a Constitutional question that the state court did not have the right nor the power to enjoin a party, which was given a federal right by Congress and the right

to bring a suit in a state court of another state, from so exercising that right and this is especially so since the federal courts have construed said act of Congress as granting the litigant the choice of the courts and this federal venue right to so maintain such a suit in such a court of a sister state.

The Act creating the Court of Appeals goes further and with this important and far-reaching language forbids jurisdiction to the Court of Appeals in cases

"Except in cases which have been finally determined in the lower court on demurrer on other methods not involving review and determination of the facts or in which all the facts have been stipulated."

Sec. 10618.

[fol. 206] The answer expressly relied upon the demurrer as it raised every conceivable law question and see the language of the answer as follows:

"And in so relying on said demurrer and for answer to such parts of amended bill of complainants say:" (Tr. 68)

Therefore, the Court of Appeals should not have assumed jurisdiction and determined this case. The court expressly stated in its opinion that there was no assignment of error and no question made in the Court of Appeals that the I. C. R. R. was not doing business in Missouri after these twenty-eight decisions of the Appellate Courts of Missouri were pointed out and read to the Court and after the testimony of Lawler was taken in which it showed that over a million and one-half dollars worth of business was done by the I. C. R. R. per year in St. Louis, Missouri, at the very time it filed this bill for an injunction.

Therefore, there was no question of fact for the Court of Appeals and that Court should not have attempted to assume jurisdiction in this important litigation.

Assignment of Error

It was recognized by the Court of Appeals though the Court failed or refused to cite the decision by our Supreme Court of Memphis Union Station vs. Manning, 144 Tenn. 641, which settled more than twenty years ago the law in Tennessee that cases involving rights granted by federal statutes, it is of course, the duty the state courts to follow

the federal decisions, if there be any upon such subjects in [fol. 207] litigation. The Court of Appeals recognized this principle though it would not quote the above decision of this court but said:

"In cases involving rights granted by federal statutes it is, of course, the duty of the state courts to follow the federal decisions, if there be any upon the subject. This being true, we see no escape, so far as this court is concerned, from the conclusion that the Crandall case, being directly in point, is controlling in the disposition of the question before us. It is not necessary to set forth in detail how the question arose in that case. The Court there had under consideration the precise question with which we are confronted, namely, whether the venue provision of the federal Employer's Liability Act placed the right to sue a defendant in any state court located in a district wherein the defendant was doing business beyond the reach of the inherent power of a court of equity to restrain one of its citizens from the assertion of that right in the courts of another state in an oppressive and unconscionable manner."

All that part above quoted on page 14 and all that part of the opinion on page 15, 16 and 17 of the opinion of the Court of Appeals, is assigned as error. The Crandall case on which the Court of Appeals based its opinion as announced and settling the question of law that was involved in this suit, both by the demurrer, and on the merits of the case, and the Crandall case was not based on any such proposition as announced by the Court of Appeals and the Court of Appeals opinion misconstrued that decision of the Federal Court and is unsound, contrary to law, contrary to constitution- rights of Mrs. Miles and her daughters, and deprives Mrs. Miles and her daughters of their federal rights as given by the Act of April 5, 1910, (45 U. S. C. A.). See grounds of demurrer (Tr. 35, 36, 37), and see decree of the Chancery Court, (Tr. 188), considering the demurrer of the defendants, in which the court dismissed the bill of the [fol. 208] I. C. R. R. Co. also upon the answer of the defendants raising the same question. The Court erred in not following the law as announced and settled in Southern R. R. Co. vs. Cochran, J., (6th Circuit) 56 Fed. (2d) 1019, 1020, and C. & O. R. R. Co. vs. Vigor, Admr., (6th Circuit), 90 Fed. (2d) 7, 8, and other cases cited.

Third and Fourth Assignments of Error

The Court of Appeals committed material error in the decree entered in this case by said court and committed error in its opinion both as to all the reasons assigned for the action of the court and its conclusion.

See original opinion of Court of Appeals in this cause.

The material and determinative pleadings of the complainant, Illinois Central Railroad Company, relative to the grounds or reasons why it thought it was entitled to an injunction in the Miles case are as follows, to-wit:

"Complainant avers that there are a large number of said witnesses for complainant, consisting of two switching crews of five men, each crew consisting of an engineer, fireman, engine foreman and two switchmen. In addition to said witnesses complainant will have as witnesses the superintendent of its line at Memphis, its trainmaster, its general car foreman, its yardmaster, its traveling engineer and at least two assistant yardmasters; that to take all said witnesses away from their employment at Memphis and transport them to St. Louis where the suit is now pending as hereinafter alleged, will be a serious inconvenience to complainant and a serious burden upon and interference with interstate commerce; that the expense of taking all the witnesses from Memphis, Tennessee, to St. Louis, Missouri, where the suit is now pending, will be large and wholly unnecessary; that there is a possibility that some of the witnesses would not attend in person and complainant would thus lose the benefit of their personal appearance in court, since complainant cannot force said witnesses by the pro- [fol. 209] cesses of the courts to attend said trial in St. Louis.

In addition complainant desires at the trial as witnesses the physicians and nurses who attended the deceased after the accident." Tr. 4.

On demurrer and also on merits of case, the allegatta and probata in this cause does not constitute, justify nor warrant the maintaining of an injunction and thereby depriving Mrs. Miles et al. of this Federal right under the Federal venue statute. (45 U. S. C. A. 56).

This is identical with the averment made in the Cochran case, 56 Fed. (2d), and in the Vigor case, 90 Fed. (2d).

Further setting forth on page 7 of the Tr. the reasons or grounds for the injunction are stated by the complainant as follows:

"That if the defendant is permitted to prosecute her said suit in the Circuit Court of the City of St. Louis, Missouri, it would cause, as hereinabove alleged, unreasonable, unnecessary and wasteful expenditures of money to the extent that the same would *constitute a burden upon interstate* commerce and unreasonably obstruct the same, not only in the amount of expense but by reason of the disturbance of complainant's normal operation of its yards in Memphis, Tennessee, and of its service generally." Tr. 7, 8.

This is the identical averment in the Cochran case and in the Vigor case.

In the amended bill no additional, equitable grounds were stated, no additional reason why interstate commerce would be burdened by the following language of the complainant's bill places the reasons or grounds of the injunction the same as in the original and with this language:

"That the said Jessie Miles by causing her said cause of action to be prosecuted in the name of Robert R. Adams as [fol. 210] Administrator instead of in her own name as Administratrix, is attempting to inflict on complainant the same injustice, the same hardship, the same unnecessary expense, and the same unnecessary burden that she was attempting to inflict upon complainant by the prosecution of her right of action in her own name, which right of action this court enjoined. Tr. 22.

Both in the original and in the amended bill, the I. C. R. R. Co. states under oath that Paul H. Miles was engaged in interstate commerce as its employee when he was injured and from which injuries he died. (Tr. 3, 4 as to the original bill, and Tr. 21 as to amended bill.)

Therefore, the rights accruing to Mrs. Miles, accrued or were created not by any state laws of Tennessee where Paul H. Miles was injured and from which injuries he died, but were under laws created by Congress. Under Art. 1, Sec. 1, Sub-Sec. 4, of the Constitution of the United States, it provides:

"Congress shall have the power * * * to regulate commerce * * * among the several states".

The Constitution further provides in a most important, far-reaching and broad provision in Art. 6 as follows:

"This Constitution and the laws of the United States, which shall be made in pursuance thereof; • • • shall be the supreme law of the land; and the judges of every state shall be bound thereby, anything in the constitution or the laws of any state to the contrary notwithstanding."

And by the Act of Congress, 45 U. S. C. A. 56, of date, April 5, 1910, Congress expressly and unequivocably created the right by which Mrs. Miles brought her suit and by which said venue act, gave her the right and jurisdiction to maintain such suit and such remedy in either the Federal Court or the State court of Missouri, if the "defendant was found doing business there".

[fol. 211] But the documentary evidence of the twenty-eight decisions of the appellate courts of Missouri pointed out and read to the court (Tr. 178, 179, 180), and duly pointed out and read to the court as shown by the decree, (Tr. 188) conclusively showing that in all of these decisions and especially in I. C. R. R. Co. vs. Crain, 335 Mo. 658, 73 S. W. (2d) 786, Cert. den. Oct. 28, 1934, 293 U. S. 607, 55 Sup. Ct. 123, 79 L. ed. 688, and in the other case of I. C. R. R. vs. Hardin, 334 Mo. 1169, 70 S. W. (2d) 1075, Cert. den. October 8, 1934, 293 U. S. 574, 58 Sup. Ct. 86, 79 L. ed. 672, expressly held that the I. C. R. R. Co., both by the state court of Missouri and by the Supreme Court of the United States in denying certiorari, that they were suable in St. Louis, Missouri, under the Federal Employer's Liability Act.

And after these cases were pointed out to the courts and after the Chief Auditor of the I. C. R. R. Co. had testified in an uncontradicted manner that the receipts from the passenger tickets and collection of freight charges at St. Louis, Missouri, was $1,488,710.74 from January 1, 1939, to December 1, 1939, the time in which the cause of action of Paul H. Miles arose and in which time the suit was instituted there (Tr. 173), showed conclusively that the company was doing business there as defined in the Federal Employer's Liability Act of April 5, 1910, 45 U. S. C. A. 56. There was no assignment of error before the Court of Appeals in this Miles case questioning the correctness of the holding of the court below and in fact, it was admitted that

the company was doing business within the meaning of that law.

The allegata of the complainant's bill is fashioned after and was, in fact, with great pride, urged before the Supreme Court of this state in this Miles case, as in the Reagin case, [fol. 212] the Supreme Court, in an opinion by Chief Justice Green, accepted the contention of the I. C. R. R. Co. as follows:

"The bill herein was fashioned after that filed in Louisville & N. R. Co. vs. Reagin, 172 Tenn. 593, 113 S. W. (2d) 743."

On pages 680 and 681 of 174 Tenn. it is clearly shown that the I. C. R. R. Co. at the last hearing before the Supreme Court of this state, urged and made the claim that this was a burden on interstate commerce to let Mrs. Miles maintain her lawsuit; that it would result in great inconvenience and expense and impair its service.

Now, the I. C. R. R. asks to switch its position, if switching can be tolerated, to say that it abandons the proposition that it would be a burden upon interstate commerce and now says that it would be inequitable under the rules of equity to permit such a lawsuit to be prosecuted which is, in fact, and in substance, the same contention made before and which the Court of Appeals, through Anderson, Judge, tried to draw a distinction which is unsound and which is error.

The same allegation and the same evidence in substance and effect appeared in the Cochran case, 56 Fed. (2d) and in the Vigor case, 90 Fed. (2d), and also before the District Court in 17 Fed. Sup., and which case went before the Supreme Court of the United States where these questions were the sole and only questions involved therein, the C. & O. R. R. Co., and the Southern R. Co. asking an injunction against the litigant prosecuting the suit in the courts foreign to where the cause of action arose. And in all of those cases, the Federal Court construed this Federal Statute as not permitting such cause of action to be enjoined on the grounds of being a burden upon interstate commerce or on account of being inconvenient and expensive to the railroad [fol. 213] company as Congress was presumed to have had those questions in mind when it gave such right to such litigants.

Regardless of whether there could possibly be a distinction or whether the I. C. R. R. Co. could switch its position from that taken last year before the Supreme Court, the averment of the bill and the proof, under the demurrer of Mrs. Miles in this case, and also under the merits of the case as raised by the answer, made fairly and co-incide with the allegation and the facts in the Vigor case, 90 Fed. (2d), and in the Cochran case, 56 Fed. (2d). And those courts have construed this federal cause of action as being given these federal rights and that an injunction could not and should not be sustained under such circumstances and under such allegation and under such proof, it becomes a federal question under federal decisions and under the Constitution of the United States as to whether or not the state court of Tennessee will announce another rule as state law, then, that the Federal Court, which construed its own statutes, and which construction becomes a part and parcel of that federal statute. Therefore, all of the decree of the Court of Appeals and its opinion by Anderson, Judge, and the reasons given therein and the results reached and decreed therein in said court we assign as error in this, the highest judicial tribunal of Tennessee, and Your Honors are asked to grant a certiorari reversing the action and results of the Court of Appeals and affirm the action of the trial court which dismissed the bill and adjudged all costs against the I. C. R. R. Co. and its surety.

Clerk's Certificate to foregoing Assignments of Error omitted in printing.

[fol. 214] IN SUPREME COURT OF TENNESSEE

[Title omitted]

MEMORANDUM DENYING PETITION FOR CERTIORARI—Filed January 11, 1941

In this suit brought in equity by the Railroad to enjoin prosecution of an action for damages in the Circuit Court in St. Louis, it appears that in the Court of Appeals the Railroad Company abandoned the contention that the prosecution of the action at law in St. Louis was a burden on interstate commerce and, therefore, justified an injunction,

and relied solely upon the proposition that the facts charged in the bill, established by the proof, and held by the Chancellor, without challenge on appeal, showed an intended course of conduct on the part of the defendants in the prosecution of this suit in a Missouri State Court which would be so oppressive and unconscionable that a court of equity, in the exercise of its inherent powers, should grant the injunctive relief sought. The Court of Appeals in an exhaustive opinion by Judge Anderson, reviewing all the cases, takes this view and holds that the venue clause, or provision of the Employers' Liability Act, relied on by the defendants, does not deprive the equity courts of their inherent right to control the conduct of its citizens and restrain them from prosecuting in a foreign state an oppressive, unconscionable, or fraudulent action.

[fol. 215] The petition before us, when analyzed, really presents this single question, and we agree with the Court of Appeals, which holds in favor of the right of courts of equity to restrain the prosecution of a suit under such circumstances, despite the venue provision relied on, under the authority of Ex Parte Crandall, 59 Fed. (2d) 969, Circuit Court of Appeals, Seventh Circuit, in which petition was denied by the Supreme Court, and expressions in other cases cited and quoted from in the opinion of Judge Anderson. Nothing need be added to that opinion. The determinative distinction seems to be this: While, because of this venue provision, the courts may not enjoin a prosecution in a foreign state of an action brought under the Federal Employers' Liability Act on the ground of interference with interstate commerce,—Congress having exclusive control of interstate commerce, and not having made any such exception in this provision conferring jurisdiction,—this limitation does not extend to the inherent power of courts of equity to restrain citizens residing within their jurisdiction from prosecution of foreign suits which are oppressive, unconscionable, or fraudulent. The writ is denied.

Per Curiam.

Clerk's Certificate to foregoing opinion omitted in printing.

[fol. 216] IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER DENYING PETITION TO REHEAR PETITION FOR CERTIORARI—February 15, 1941

This cause came on further to be heard upon a petition to rehear the petition for certiorari, and after full consideration by the Court, the Court is of opinion that there is no merit in said petition, and the same is denied at the cost of the petitioner, for which let execution issue.

Clerk's Certificate to foregoing order omitted in printing.

[fol. 217] IN THE COURT OF APPEALS OF TENNESSEE

[Title omitted]

JOURNAL ENTRIES OR THE TRANSCRIPT OF THE DOCKET

1. The transcript of the record was filed in the Court of Appeals April 2, 1940.
2. Three printed copies of assignments of error filed by Evans, Evans & Creson, attorneys for complainant, on April 29, 1940.
3. Three printed copies of reply brief filed by W. G. Cavett and H. S. Buchanan, attorneys for defendant on May 15, 1940.
4. Three printed copies of reply brief filed by Evans, Evans & Creson, attorneys for complainant, May 15, 1940.
5. One typed motion to transfer the case to the Supreme Court filed by W. G. Cavett and H. S. Buchanan, attorneys for defendant, April 22, 1940.
6. Argument of counsel for both parties heard by the Court of Appeals May 15, 1940.
7. Decision of Court of Appeals, reversing decree of Chancery Court of Shelby County, rendered July 1, 1940. Opinion by Anderson, Judge.
8. One typed petition for certiorari filed by W. G. Cavett and H. S. Buchanan July 22, 1940.

9. One typed Reply brief filed by Evans, Evans & Creson, August 10, 1940.

10. One typed Motion to Advance Hearing filed by W. G. [fols. 217a-217b] Cavett August 8, 1940.

11. Petition for Certiorari denied by the Supreme Court of Tennessee January 11, 1941. Per Curiam memorandum opinion filed January 11, 1941.

12. One typed petition to rehear filed by W. G. Cavett and H. S. Buchanan, January 18, 1941.

13. Petition to rehear denied by Supreme Court of Tennessee, February 16, 1941.

Clerk's Certificate to foregoing Docket and Journal Entries omitted in printing.

[fol. 218] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the Petitioner,

It is Ordered that the time within which to file petition for certiorari in the above-entitled cause be, and the same is hereby, extended to, and including, July 14, 1941.

Owen J. Roberts, Associate Justice of the Supreme Court of the United States.

Dated this 14th day of May, 1941.

[fol. 219] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 10, 1941

The petition herein for a writ of certiorari to the Court of Appeals of the State of Tennessee, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 14 1941
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 272

MRS. JESSE MILES ET AL., PETITIONERS;

VS.

ILLINOIS CENTRAL RAILROAD COMPANY, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TENNESSEE AND THE SUPREME COURT OF TENNESSEE, AND BRIEF IN SUPPORT THEREOF.

WILLIAM G. CAVETT,
Memphis, Tennessee,
Attorney for Petitioner.

HAL S. BUCHANAN,
Memphis, Tennessee,
ROBERT A. HARRIS and
LOUIS E. MILLER,
St. Louis, Missouri,
Of Counsel.

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CONSTITUTIONS

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Supreme Court of the United States

OCTOBER TERM, 1940.

No. _____

MRS. JESSE MILES ET AL., PETITIONERS,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TENNESSEE AND THE SUPREME COURT OF TENNESSEE, AND BRIEF IN SUPPORT THEREOF.

PETITION.

Petitioners pray this court to review on writ of certiorari a judgment of the Court of Appeals of Tennessee and the Supreme Court of Tennessee, in the case there entitled *Illinois Central Railroad Co.* v. *Mrs. Jesse Miles, Administratrix, et al.*

A final judgment of the Supreme Court of Tennessee was rendered on February 14th, 1941, when a petition for a rehearing was denied (R.____). And the opinion of the court of appeals and of the Supreme Court were written opinions and findings and appear in the record (R.____), but are not yet published.

The judgment of the trial court of Shelby County, Tennessee, sustained the demurrer and the merits of the case in favor of Mrs. Miles and her two daughters, and upon appeal by the Illinois Central Railroad Company from that judgment to the Court of Appeals of Tennessee. That court on _____, 1940, sustained the *one assignment of error* made by the railroad company which did not challenge the action of the court in sustaining the demurrers but merely claimed that the evidence showed a hardship, injustice and unnecessary burden would result to the defendant in permitting the lawsuit in Missouri to be prosecuted (R.____). The petition was promptly filed before the Supreme Court of Tennessee for certiorari and four assignments of error were presented to that court in said petition for certiorari (R.____). The Supreme Court denied certiorari but, by its opinion, it practically *adopted everything* that was held by the court of appeals as its opinion. The procedure under Tennessee statutes is that where a certiorari is denied by the Supreme Court, the record goes back and is lodged in the court of appeals, but in this case the record seems to have been lodged with the clerk of the Supreme Court. The clerk of the Supreme Court and the clerk of the Court of Appeals for the Western Division of Tennessee is the same person, J. E. Springbett (22 Tenn. App. Rep. 5, 175 Tenn. 6). The clerk of the Supreme Court certified this record and evidently this record is lodged in the Supreme Court of Tennessee. However, petitioners pray for certiorari to both courts so a technicality could not successfully be interposed that might defeat justice.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Paul H. Miles was employed by the Illinois Central Railroad Company as an inspector of cars at Memphis, Tennessee, and while he was engaged at his post of duty and inspecting cars engaged in interstate commerce on June 5, 1938, he was negligently and wrongfully killed by the operation of an Illinois Central Railroad Company's train.

Mrs. Jesse Miles was appointed by the Probate Court of Shelby County, Tennessee, administratrix of her deceased husband's estate. She brought suit in the law court of St. Louis, Missouri, for $45,000 damages claiming that Paul H. Miles was engaged in interstate commerce at the time of his injuries and she was entitled to recover under the Federal Employers' Liability Act. This injunction suit was filed in the Chancery Court of Shelby County, Tennessee, seeking an injunction against Mrs. Miles as administratrix, enjoining her from prosecuting her suit in the state court of Missouri upon the alleged grounds it would be inconvenient, expensive and a burden on interstate commerce. And the bill filed by the railroad *admitted under oath* that Paul H. Miles *was engaged at the time of his injury in interstate commerce.* Mrs. Miles was seeking to recover by reason of the Federal Employers' Liability Act.

The chancellor granted a temporary injunction, feeling that he was bound by the case of *Louisville, N. R. Co. v. Ragon*, 172 Tenn. 539. Mrs. Jesse Miles dismissed the lawsuit she had filed in St. Louis, Missouri, and surrendered her letters of administration in the Probate Court in Shelby County, Tennessee. Later she gave power of attorney to Robert R. Adams of St. Louis, Missouri, to be appointed administrator of her deceased husband Paul H. Miles's estate, and Robert R. Adams was duly appointed and qualified as such administrator, under the Missouri

laws, and then and there filed suit for damage against the Illinois Central Railroad Company for the wrongful and negligent killing of Paul H. Miles while he was engaged in interstate commerce, and the suit sought to recover $45,000 as damages under the Federal Employers' Liability Act (R.___), and the Illinois Central Railroad Company filed what it called an amended and supplemental bill against Mrs. Jesse Miles and her two daughters, enjoining and prohibiting them from testifying or lending any aid or taking any part whatsoever in this suit filed by Robert R. Adams, administrator, in the law court of St. Louis, Missouri.

Chancellor Bejach overruled the demurrer but exercised discretion and granted Mrs. Miles an appeal to the Supreme Court of Tennessee and that court, on July 1, 1939, distinguished the Ragon case, and while it overruled the demurrer the Supreme Court reviewed and remanded the case for the lower court to ascertain whether or not the defendant railroad was doing business in Missouri when sued and held:

> "If it develops that complainant is doing business within the State of Missouri in the sense of the Federal Employers' Liability Act, we are hesitant to award the injunction therein sought, although we do not foreclose that question until all of the facts are before us."
>
> 174 Tenn. 685.

Upon a remand of the cause to the Chancery Court of Shelby County, Tennessee, Mrs. Jesse Miles and her two daughters filed an extensive answer, and relied upon the demurrer as expressly held by the Supreme Court in this language:

> "For the reasons thus indicated, we are not willing to dispose of this case on demurrer but prefer an answer developing *all facts* as to the *nature of the complainant's business in Missouri.* * * * The decree of the chancellor is modified, the demurrer is over-

ruled *with leave to defendants to rely upon the same in their answer.*"

174 Tenn. 687.

Testimony was taken by the Illinois Central Railroad Company to sustain its contention that it would be necessary to take certain witnesses away from their Memphis yards and, etc., and that it would be expensive to transport them to St. Louis and would inconvenience the company and would be a burden upon interstate commerce.

The testimony of the chief auditor of the Illinois Central Railroad Company was taken by the defendants and, by his uncontradicted evidence, the Illinois Central Railroad Company did approximately a million and half dollar business per year in its St. Louis, Missouri, office, where sued, and that it operated numerous trains in that state and had numerous offices and employees in St. Louis, Missouri, where sued.

The chancellor, upon hearing the case upon the demurrer and upon the merits, sustained the demurrer and the merits of the case in favor of the defendants, dissolved the injunction and dismissed the bill.

The court of appeals, upon hearing the appeal upon one assignment of error, only reversed the action of the trial court and made the temporary injunction perpetual. Mrs. Miles made a motion in the court of appeals that cause be transferred to Supreme Court, as court of appeals had no jurisdiction. This question was not answered by the court of appeals in any written memorandum (R.____).

An extensive petition for certiorari was filed with the Supreme Court of Tennessee, first raising the question that the court of appeals had no jurisdiction as the case was decided below, upon demurrer, as well as upon its merits and the legislative act of Tennessee that created the court of appeals (Sec. 10618, Code of Tenn., 1932), expressly gave no jurisdiction to the court of appeals to pass on questions raised by a demurrer, and this was pre-

sented to the Supreme Court in the first assignment of error, and the other three assignments of error extensively raised all federal questions that were raised in the demurrer as well as in the answer.

The Supreme Court of Tennessee kept the case under advisement for a great length of time and finally denied certiorari (Jan. 10, 1941). A petition for rehearing was promptly filed and that was denied Feb. 17, 1941, and this petition is filed within the time provided in order of this court by Mr. Justice Roberts May 14, 1941.

JURISDICTION OF THIS COURT.

Jurisdiction of this court is based upon Sec. 237 of the Judicial Code, as amended by the Act of Feb. 13, 1925, 43 Stat. 937, 28 U. S. C. A. 344 (*Pittman* v. *Home Owners Loan Corp.*, 308 U. S. 21), authorizing petitions for writs of certiorari to be prayed for and issued to higher courts of various states where "a title, right, privilege or immunity is set forth or claimed under a statute of United States." In this case, a *privilege, right*, and *an immunity* was set forth in the extensive *demurrer* and in the *answer*, and were *both sustained* by the chancellor but were both erroneously reversed by the court of appeals and the Supreme Court of Tennessee. The Supreme Court of Tennessee is the "highest court of that state" as set forth in Art. VI, Sec. 1, of the Const. of Tenn. of 1870.

SPECIFICATION OF ERRORS OR THE QUESTIONS PRESENTED.

Your petitioner submits that the court of appeals and the Supreme Court of Tennessee were each in error in the following respects:

1. The court of appeals and the Supreme Court of Tennessee erred in reversing the trial court or chancellor's decision, which sustained the demurrer and the merits of the case in favor of Mrs. Miles and her two daughters, and both of said appellate courts of Tennessee failed or refused to follow the language of the Federal Employers' Liability Act (28 U. S. C. A. 56) and said courts failed or refused to follow the interpretation or construction of said statute given by the federal courts and which construction and interpretation of said statute became and is a part of said statute, and said Tennessee courts applied inapplicable state rules of decision or interpretation instead of that of the federal courts.

2. The court of appeals and the Supreme Court of Tennessee erred in enjoining permanently Mrs. Jesse Miles and her two daughters from testifying or aiding in any way whatsoever the prosecution of the suit instituted by R. R. Adams, administrator, in the law court of St. Louis, Missouri, which suit sought a recovery of damages for the wrongful and unlawful death of Paul H. Miles while he was employed by the Illinois Central Railroad Company and was then and there engaged in interstate commerce, and which cause of action was governed by the Federal Employers' Liability Act. And said courts should have followed the federal law and the interpretation of same by federal courts because whenever the rights or situation of parties are chiefly defined and established by law, equity has no power to change or unsettle those rights or that situation but in all such instances the maxim, *aequitas sequitur legem* (equity follows the law), is strictly applicable.

3. The court of appeals and the Supreme Court of Tennessee erred in reversing the trial court and in granting an injunction against Mrs. Miles and her two daughters as set forth in said injunction because

> The Federal Employers' Liability Act expressly conferred upon the defendants in this suit the right to bring her action for damage or compensation in the court in which she brought it.

And it cannot be assumed that the Congress of the United States, in allowing such action to be brought in the district in which the defendant shall be found doing business at the time of commencement of such action, did not have in mind the inconvenience and expenses that would result in almost, if not quite, every case, from bringing suit elsewhere than at the place where the cause of action arose.

Congress could have provided that actions under the Federal Employers' Liability Act should have been brought at the place where the same would not constitute a burden on commerce, inconvenience and expenses to the railroad company, but Congress has the power to regulate interstate commerce and may when it sees fit place incidental burdens thereon by jurisdictional statutes, and the remedy, if any, is legislative and not judicial. Even though such a suit may be a burden, but oppressive and unreasonable, it is not. If the Tennessee Court of Appeals and the Supreme Court's opinion in this Miles case is to stand, the federal court's construction and interpretation of this federal right under this federal statute must fall.

4. The court of appeals and the Supreme Court of Tennessee erred in reversing the trial court because there was no equity on the face of the complainant's (Illinois Central Railroad Company's) bill. This was the eighth ground of the demurrer which was sustained by the trial court and reversed by two appellate courts.

REASONS RELIED ON FOR GRANTING THE WRIT.

(1) It is submitted that this court should entertain jurisdiction for the following reasons: (1) The question is of importance as evidenced by the numerous reported decisions in the federal and state courts, bearing more or less upon the questions involved.

The decision and opinion of the court of appeals and the Supreme Court in this Miles case is in *direct conflict* with the *federal cases construing this federal statute.*

1. *C. & O. R. Co.* v. *Vigor, Admr.*, (6 C. C. A.) 17 Fed. Supp. 602, affg. 90 F. 2d 7, c. d. 58 S. Ct. 26, 302 U. S. 705, 82 L. Ed. 545.
2. *Taylor* v. *A., T. & S. F. R. Co.*, 292 Ill. App. 457, 11 N. E. 2d 610, c. d. 58 S. Ct. 842, 82 L. Ed. 528.
3. *Radet* v. *B. & O. R. Co.*, 108 F. 2d 580, c. d. April 1, 1940, 309 U. S. 682.
4. *B. & O. R. Co.* v. *Kepner*, 137 O. St. 409, c. d. April 14, 1941, ___ S. Ct. ___, 85 L. Ed. 750.
5. *So. R. Co.* v. *Cochran, Judge*, (6 C. C. A.) 56 F. 2d 1019.
6. *Trapp* v. *B. & O. R. R. Co.*, 283 Fed. 655.
7. *Connelly* v. *Central R. R. Co.*, (N. J.) 238 Fed. 932.
8. *Norris* v. *I. C. R. Co.*, 18 F. 2d 584.
9. *Schendel* v. *McGee, Judge*, 300 Fed. (8 C. C. A.) 273, also, 292 Fed. 326.
10. *Wood* v. *Delaware R. R. Corp.*, (2 C. C. A.) 63 F. 2d 235.
11. *So. Ry. Co.* v. *Painter, Admr.*, 117 F. 2d 100.

The Tennessee appellate courts, recognizing that it was their duty to follow the *federal court's construction and interpretation* of federal statutes, committed monumental errors by citing and following *dicta* in *Cran-*

dell v. *Hebbe*, 53 F. 2d 739; and *B. & O. R. Co.* v. *Bole*, 31 Fed. Supp. 221, and not following the above 11 decisions correctly interpretating and construing this federal right.

In the *last case*, the district judge Baker did not have *any lights* before him except the *railroad company's brief*. In a subsequent case, *B. & O. R. Co.* v. *Jesse C. Clemm and Henry G. Shores*, on January 15, 1941, he *overruled* the opinion in the Bole case and *refused* to follow the opinion that he had formerly followed, the *Ex parte Crandall*, 53 F. 2d 969, case (37 Fed. Supp. ——) Copy filed in No. 678, October Term, Sup. Ct., 1940, *B. & O. R. Co.* v. *Kepner*) because that case did not apply and first first opinion was based upon dicta and error and not determinative questions in that case.

Judge Evans, in that case, in 52 F. 2d 653, while using a lot of dicta in his opinion, reached a correct decision by holding:

> "Its judgment (Indiana trial court's) is reviewable by appeal to Indiana courts, but is not reviewable by this court through an application for a writ of habeas corpus."

The Seventh Circuit Court of Appeals, in this case (53 F. 2d 73), after using a lot of dicta, like Judge Evans did, determined the question correctly, as follows:

> "The Vandenberg County Probate Court appearing to have *jurisdiction over the subject matter* wherein its *temporary injunction* was granted, the federal court by habeas corpus or otherwise are *without power to pass upon* the *wisdom, justice,* or *legality* of its action."

A writ of habeas corpus cannot be used for a writ of error or appeal.

It has been settled by thirteen decisions of the Supreme Court of the United States that a writ of habeas corpus can not be used as an appeal, or writ of error, and held:

"In the regular and ordinary course of procedure, the power of the highest state court in respect of such question should first be exhausted."

U. S. ex rel. Kennedy v. *Tyler*, 269 U. S. 13, 70 L. Ed. 138, 144, and cases cited.

It has been settled that:

"The rule is well settled that a restraining order or *interlocutory injunction* issued by a *court of competent jurisdiction* must be obeyed even if erroneous and based upon an invalid statute, *until it be set aside by orderly review.*"

Howat v. *Kansas*, 258 U. S. 181, 66 L. Ed. 550.
McLeod v. *Majors*, 102 F. 2d (5 C. C. A.) 128.

Tennessee courts, therefore, have erroneously applied and misconstrued what federal courts held on the *determinative questions* in this Miles case and have failed or refused to properly apply the true federal court's *interpretations and constructions of this valid act of Congress.*

(2) The Tennessee appellate courts in this Miles case while expressing doubt, dicta, by saying and holding that a state court might not enjoin a suit filed under the Federal Employers' Liability Act *in a federal court* that such reason and rule *would not apply to enjoining such an action in a state court.* This is reasoning in a circle and was not sound logic nor law and conflicts with the act of Congress because this federal right was created and given life and came from the same *womb of creation* —Congress. Congress had power under Art. I, Sec. 8, Subsec. 4, of U. S. Const.,

"To regulate commerce * * * among the several states,"

and having created the federal right and *venue jurisdictional statute* this *implies a power to preserve this right.* The power to create *implies the power to preserve.* Art. I, Sec. 8, Subsec. 19, of U. S. Const., has always provided that Congress had power

"To make all laws which shall be necessary and proper for carrying into execution the *foregoing powers.*"

Art. VI of U. S. Const. has always provided:

"This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the *judges in every State shall be bound thereby,* anything in the Constitution or *laws of any State* to the contrary notwithstanding."

The Fourteenth Amendment of the United States Constitution provides a prohibition against states as follows:

"No State shall make or inforce any law which shall abridge the privileges or immunities of the citizens of the United States nor deny to any person the equal protection of the laws."

This was pointed out to the trial court, the court of appeals, and to the Supreme Court of Tennessee in the *demurrer,* and in the *answer* of Mrs. Miles and her daughters, and in *assignments of error.*

The Federal Employers' Liability Act, as amended April 5, 1910, provided:

"Under this act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing of such action.

"The jurisdiction of the courts of United States under this act *shall* be concurrent with that of the *courts of the several states,* and *no case arising under this act* and brought in *any state court of competent jurisdiction* shall be *removed* to any court of the United States" (45 U. S. C. A. 56).

This, and the constitutional provisions quoted above, placed a *mandatory duty upon state courts* the same as

upon federal courts to entertain and try cases arising under this act of Congress, and an injunction against this is unlawful.

"The jugular vein" or "the hub of the case" in this act gave the injured employee an *absolute right* to institute and *maintain* his suit *in a state court of competent jurisdiction. Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 56 L. Ed. 327, reversing the Supreme Court of Connecticut which declined jurisdiction in the state courts and see *McKnett* v. *St. L. & S. F. R. R.*, 292 U. S. 230. In the Mondou case the Supreme Court said:

> "The power to create implies the power to preserve.
>
> "The government of the Union, though limited in its powers is supreme within its sphere of action.
>
> * * *
>
> "It is the government of all; its powers are delegated by all; it represents all, and acts for all (see Art. VI, U. S. Const.).
>
> "When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for *all the people* and *all the states* and thereby established a *policy for all*.
>
> "We conclude that *rights arising* under the act in question (Federal Employers' Liability Act) may be enforced, *as of right*, in the *courts of the states* where their jurisdiction, as prescribed by local law, *is adequate* to the occasion."

We next follow this question no further because the matter is *stare decisis* in Missouri, *where the Miles case was instituted. State ex rel. Foraker* v. *Hoffman, Judge*, 309 Mo. 625, 274 S. W. 362, reversing Judge Hoffman who declined jurisdiction under the Federal Employers' Liability Act, and the Supreme Court of the United States, affirmed 274 U. S. 24, 47 S. Ct. 20, 71 L. Ed. 905. And as both, the Missouri Supreme Court and the Supreme Court of United States *have settled* as to Missouri state courts *this question*, it is not an *open*

question for any other court in the United States, and especially not an open question for the Tennessee appellate courts in this case.

It was urged by great lawyers that *state courts could not exercise* the jurisdiction under this Federal Employers' Liability Act, *as well as federal courts,* but the Supreme Court answered this argument and held that the *state courts had no discretion* to deny jurisdiction and said:

> "We are not disposed to believe that the exercise of jurisdiction by state courts will be attended by any appreciable inconvenience or confusion; but be that as it may, it affords no reason for *declining* a *jurisdiction conferred by law.*"
>
> 223 U. S. 58.

(3) The Tennessee appellate courts committed a material error and *deprived* Mrs. Miles and her daughters of this *material, substantial,* and *important federal right* granted by the act of Congress, and Mrs. Miles and her daughters exercising this federal and constitutional right had the right to choose their own court, the state courts of Missouri which state laws constitutionally provide for a verdict in these Federal Employers' Liability cases by *nine jurors* instead of *twelve as required by Tennessee law* and as required in the federal courts. The Sixth Circuit Court of Appeals, in deciding this question, interpretated or construed this federal act as giving the *choice of the court to the plaintiff* and said:

> "The manifest purpose was to yield to the suitors under it the choice of tribunal as between the courts of the United States and the *several states.*"
>
> *Teel, Admr.,* v. *C. & O. R. Co.,* 204 Fed. 917, 47 L. R. A. (N. S.) 23.

The Supreme Court of the United States, interpretating and construing their *venue jurisdictional statute,* held that the *choice of the courts was with the plaintiff* and that the *plaintiff had a right to select a state court* where

the *jury's verdict was valid by nine or ten jurors* and that this *remedial statutory right belongs to the plaintiff*, and the court said:

> "The grant of concurrent jurisdiction implies that in the first instance *the plaintiff shall have the choice of the court.* As an incident, he is entitled to whatever *remedial advantage inheres* in *that particular forum. M. & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 60 L. Ed. 961."
>
> *Mo. ex rel. R. R. Co.* v. *Taylor*, 266 U. S. 200, 45 S. Ct. 47, 69 L. Ed. 247, 42 A. L. R. 1232, 1235.

Tennessee appellate courts have decreed this right to the Illinois Central Railroad Company.

The trial court in this Miles case followed this construction and interpretation of this federal statute by the Sixth Circuit Court of Appeals and by the Supreme Court of the United States, but the court of appeals and the Supreme Court of Tennessee declined to do that, and what the Sixth Circuit Court of Appeals and the Supreme Court of United States interprets this act to mean, and what rights it gives must either stand or the Tennessee appellate courts, which takes away these rights, must stand, and the federal court's interpretations must fall.

(4) The federal courts *construing and interpretating this act of Congress* had long signboarded the highway of travel for litigants that the courts, though it was *expensive, inconvenient,* and *burdensome* and *burdensome upon interstate commerce, had no discretion to deny the litigant of this federal right to bring and maintain his or her suit* under the Federal Employers' Liability Act, *in any court having jurisdiction over the defendant.* (1) *Dimmit Hoffman* v. *Mo. ex rel. Foraker, Admr.*, 309 Mo. 625, 274 U. S. 20, 71 L. Ed. 906. (2) The Eighth Circuit Court in *Schendel* v. *McGee*, 300 Fed. 273, interpretating and construing this act held:

"Congress has not given the courts the right to exercise discretion as to whether the case shall be prosecuted, or such prosecutions refused, because the same may be a burden on commerce."

(3) *C. & O. R. Co.* v. *Vigor, Admr.*, 90 Fed. 7, c. d. 58 S. Ct. 26, 302 U. S. 705, 82 L. Ed. 545, held:

"We held in *So. Ry. Co.* v. *Cochran*, 56 F. 2d 1018, that the filing of a suit in such a jurisdiction, even though it was inconvenient was not enough to *justify a court of equity* in enjoining its prosecution in the *face* of the *statute giving the right to bring the action in that jurisdiction.*"

In the Cochran case, the court said:

"Has the defendant (A. M. Cochran, D. C.) *any discretion* to refuse (for equitable reasons) to exercise it (jurisdiction)? We think not."

So. Ry. Co. v. *Cochran, J.*, 56 F. 2d 1019, 1020.

Thirty years ago, the Supreme Court in *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, held that the Connecticut court having general jurisdiction could not *exercise a discretion* and refuse the litigant the federal right to try his case in the state courts of Connecticut.

It is true that some state courts which have made human errors have misconstrued the *Douglass Case*, 279 U. S. 377, 73 L. Ed. 372, in which the chief justice, Mr. Justice Van Deventer, and Mr. Justice Butler dissented, but that case is easily understood when the language is carefully and scholarly read which says:

"It may very well be that if the Supreme Court of New York were given *no discretion*, being *otherwise competent*, it would be *subject to a duty.*"

Mondou v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 56 L. Ed. 327, 348, 349, 38 L. R. A. (N. S.) 44, 32 Sup. Ct. Rep. 169, N. C. C. A. 875.

And since the *McKnett Case*, 292 U. S. 230, and the *Hoffman Case*, 274 U. S. 20, can there be any doubt as to *duty of state courts?* In this Miles case we are not concerned with *any particular state statute* of New York or some of the other forty-eight states, but this suit involves only the state statute of Missouri and the act of Congress and that is fully adjudicated and settled in the Hoffman case as to Missouri courts. In the Hoffman case the question of the expenses of transportation of witnesses and inconvenience to the railroad was directly involved in the Missouri courts of general jurisdiction, and where the circuit judge, exercising his discretion in denying Foraker this federal right to select his own court and try his case in Missouri, was settled by both the Supreme Court of Missouri and the Supreme Court of United States unanimously, and regardless of the statute laws of New York or some other state statute, the matter is *stare decisis* in Missouri on these federal employers' liability cases. Tennessee appellate courts in this Miles case conflict with this well-settled construction of this federal right.

(5) The court of appeals and the Supreme Court of Tennessee committed error by holding that the state courts had "inherent equitable jurisdiction to enjoin Mrs. Miles and her daughters from aiding or taking any part in the Missouri suit *to enforce this federal right.*" And, if the state courts of Tennessee can cut off, pare down, and *destroy this federal right* given by this act of Congress then, indeed, the Tennessee equity courts can set themselves up czaristically or dictatorially, and the Tennessee courts' idea is supreme to the federal courts' construction of this federal statute and the act of Congress, which was constitutionally created. While the court of appeals and the Supreme Court of Tennessee were *bound by the pleading* of the Illinois Central Railroad Company in its sworn bill and which *contention was accepted* by it, and correctly set forth, in 1939, in *Ill. Cent. R. R. Co.* v. *Miles*, 174 Tenn. 676, where the court concretely set

forth all that was charged in the bill that would *tend* to warrant a court of equity in granting an injunction as follows:

> "It was further alleged that a defense of the suit brought by the administratrix as aforesaid would necessitate the transportation of many witnesses from Memphis to St. Louis, that numbers of these witnesses were employees of complainant railroad company, that it could not compel the attendance of necessary witnesses at a trial in St. Louis, and that the transportation of its employees to testify at St. Louis would disrupt its service, and that a trial of this case at St. Louis would put the *complainant to great inconvenience and expense and would be an undue burden on interstate commerce.*"

The pleadings were never changed and this case was litigated before the Supreme Court in 1939, and before the trial court in 1940, upon the idea that to permit this suit to be prosecuted in St. Louis, Missouri, would cause "great inconvenience, expenses, and would be an undue burden *on interstate commerce.*"

But when the case reached the court of appeals, the railroad company made only one assignment of error that the evidence showed that the prosecution of the suit in Missouri "would result in hardship, oppressive injustice, unnecessary and an unconscionable burden on the defendant.

Notwithstanding the well-settled and unanswerable rule of law throughout the United States, as well as in Tennessee, that a *litigant can not switch its contention and position* in litigation like a squirrel can jump from tree to tree, or limb to limb; Tennessee appellate courts permitted this. Certainly the probata could go no further than the *allegata* and the Tennessee courts' opinion and conclusion and result of their decision and decree *are in conflict with three former decisions of this court*, which have settled that question contrary to that which the Tennessee courts have held, and this court's language and decision is as follows:

"As a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the state and retain or refuse jurisdiction, according to the relative inconvenience of the parties."

1. *Hoffman* v. *Mo.*, 274 U. S. 21, 71 L. Ed. 907.
2. *D. & R. G. R. R. et al.* v. *Terte*, 284 U. S. 287, 76 L. Ed. 295.
3. *National Milling Company* v. *Columbia Milling Company*, 292 U. S. 511, 54 S. Ct. 797, 78 L. Ed. 1396, a unanimous opinion by Mr. Justice Cardozo.

In the National Milling Company case, the court unanimously disposed of the question as follows:

"Such a suit *may be a burden*, but *oppressive* and *unreasonable, it is not.*"
292 U. S. 511.

The Hoffman case and the Terte case involved the Federal Employers' Liability Act. The Tennessee appellate courts in the Miles case fail or refuse to follow this construction and law.

(6) The *identical question* (in Federal Employers' Liability Act cases) was before the sixth circuit in *So. R. R. Co.* v. *Cochran*, 56 F. 2d 1019, and in the later case, *C. & O. R. Co.* v. *Vigor, Administrator*, 90 F. 2d 7, c. d. 302 U. S. 705. Yet the appellate courts of Tennessee would not follow this federal statute and federal court construction of same as it was their duty to do.

Kloeb v. *Armour & Co.*, (Dec. 9, 1940) 85 L. Ed. 156.

The federal courts follow the state courts' *construction and interpretation of state statutes*. *West et al.* v. *Am. Tel. & Tel. Co.*, (Dec. 9, 1940) 85 L. Ed. 147. *Six Companies of Cal. et al.* v. *Joint Highway Dist.*, 85 L. Ed. 159, 61 S. Ct. ____, 85 L. Ed. ____; *Fidelity Union Trust Co.* v. *Field*, 61 S. Ct. ____, 85 L. Ed. 170. The rights growing out of this federal statute to Mrs. Miles and her

daughters *in nowise concern state statutes of Tennessee* and if, as the court of appeals and the Supreme Court have held, that the Tennessee courts have inherent equity jurisdiction, still they can not *cut off, pare down* and *destroy* this federal right given by the act of Congress and, if such state rules of equity conflict with the federal right given to Mrs. Miles, the state rules of equity must yield and the laws made in pursuance of United States Constitution are supreme laws of the land and must be obeyed even though the court of appeals and the Supreme Court of Tennessee think otherwise. Yet they have not done so in this case. This Federal Employers' Liability Act of Congress not only *creates* these federal rights to Mrs. Miles and her daughters, but the act also provides the *manner of its enforcement.* In other words, the *liability* and *remedy* were created by the *same statute of Congress* under constitutional authority, and the *remedy there created must be preserved*, otherwise, Tennessee appellate courts can substitute their idea for that of Congress. *Pollard* v. *Bailey*, 87 U. S. 520, 22 L. Ed. 376; *Stewart, Admr.*, v. *B. & O. R. R. Co.*, 168 U. S. 445, 42 L. Ed. 537.

This was not recognized and applied *in this Miles case*, though, in another case, Tennessee courts did so apply the law, 175 Tenn. 314.

Under this act of Congress (45 U. S. C. A. 56), by the positive language of the act, suit could have been brought by Mrs. Miles "in the district of the residence of the defendant," in Illinois.

Then unquestionably it was the *intention of Congress* to permit such a suit as Mrs. Miles chose to institute in either state or federal court *in the district of the residence of the defendant*, which was Illinois. And, therefore, Mrs. Miles could have unquestionably brought and maintained her suit in the state courts of Illinois *at Chicago*, or in *East St. Louis, Illinois*, just across the river from St. Louis, Missouri, and unless both the positive language of the act and the expressed decision of the Supreme Court of the United States, *Hoffman* v. *Foraker*, 274 U. S. 44.

are to be absolutely disregarded. And if it would not have been inequitable to follow what the act provided and the clear decision of the Supreme Court, and in this Hoffman case, the same questions were involved as were in the Miles case, and the railroad contended that it had *eleven witnesses that had to be brought from Kansas* where the action occurred and *great inconvenience, hardship*, and a *burden on commerce*, would result. The circuit judge *accepted this contention* but the Supreme Court of Missouri and the Supreme Court of United States *reversed* Judge Hoffman.

Mrs. Miles had the statutory venue jurisdictional right to maintain this suit in East St. Louis, Missouri, in state or federal court. It would be a "distinction without a difference" to say that it would be inequitable for her to maintain the same suit across the river in St. Louis, Missouri, *where the defendant was found doing a million and a half dollars of business*, and especially since the act says that suit may be maintained in state or federal court "in the district in which the defendant is found doing business at the time of commencement of such action."

The federal court's construction of this federal statute must be the supreme law of the land (Art. VI of the U. S. Const.), which says that such action of Congress shall be the supreme law of the land, and that the judges in every state shall be bound there by anything in the constitution or law of any state to the contrary notwithstanding. And if Tennessee appellate courts in this Miles case are to be sustained, then indeed Article VI is rendered "sounding brass and tinkling cymbals." And this Constitution which we all have felt that we are treading on holy ground when we discuss it, is but "a scrap of paper."

(6) The Tennessee appellate courts have practically *destroyed* Mrs. Miles's *rights granted under this federal statute* because the federal statute (45 U. S. C. A. 56) placed a *two years' statute of limitations* upon the filing

of such suit and the absolute enjoining of the suit filed in Missouri *destroys this right* to bring a new suit. In *Swift & Co.* v. *Warehouse Co.*, 128 Tenn. 82, 102, the Supreme Court enjoined the Memphis Storage & Warehouse Company from relying on the *statute of limitations as a defense* to another suit to be filed. This was called to the attention of the Supreme Court of Tennessee, but it fell upon deaf ears.

The Supreme Court of Tennessee committed error in not finally determining by its opinion and by its decree the matters in litigation in 1938. *I. C. R. R. Co.* v. *Miles*, 174 Tenn. 676. Because the Tennessee court had neither power nor jurisdiction to decide whether or not the Missouri courts had jurisdiction over the Illinois Central Railroad Company. That was a *matter solely and exclusively for the Missouri court.*

And the Illinois Central Railroad Company, in its sworn bill, admitted that it did business in St. Louis, Missouri, but claimed that the business was *interstate business.* It had for many years been settled by two or more decisions of the Supreme Court of the United States that this was no grounds for denying jurisdiction, and the court held:

> "Even a foreign corporation is not immune from the ordinary process of the courts of the state where its business is entirely interstate in character. *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, 58 L Ed. 1479, 34 S. Ct. 944.
>
> "It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, *although thereby interstate commerce is incidentally burdened.*"

Hoffman v. *Mo. ex rel. Foraker*, 274 U. S. 244. Yet the Supreme Court of Tennessee set itself to investigate, decree and determine *whether or not the Missouri court had jurisdiction in the Miles case*, though it was a *power* and a *matter* for the Missouri court *alone*. By the action

of the Supreme Court in not finally determining the case in 1938 or 1939, but remanding the case, and the delay that was had in the court of appeals and nearly or about nine or ten months in the Supreme Courts in disposing of the certiorari from the court of appeals was determined by the Supreme Court of Tennessee, *more than two years elapsed since Paul H. Miles was wrongfully and negligently killed* by the Illinois Central Railroad Company, and no Tennessee statute can set itself supreme and take the place of the act of Congress, *which limitation law is two years.*

When this matter was called to the attention of the Supreme Court of Tennessee both in the petition for certiorari and in the petition for rehearing, it was the most inequitable action on the part of the Supreme Court of Tennessee in not according to Mrs. Miles the same right that it had given the great packer, *Swift & Co.* v. *Warehouse Co.*, 128 Tenn. 102; yet Mrs. Miles, who has been litigated with by the powerful railroad, and with her resources exhausted, and her patience and her rights destroyed, was left for the two years' statute of limitations to be entered as a defense by the railroad company if another suit should be brought.

Your petitioner presents herewith as a part of this petition a certified copy of the transcript of the record in the court of appeals and the Supreme Court of Tennessee and presents its brief for consideration with this petition discussing the questions involved.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this court directly to the court of appeals and to the Supreme Court of Tennessee commanding said courts to certify and send to this court on a day certain to be therein designated a full and complete transcript in said courts styled, "*The Illinois Central Railroad Company* v. *Mrs. Jesse Miles et al.*, to the end that said case may be reviewed and determined by this court and that the petitioner may

have such relief as this court may deem proper, lawful, and equitable, and that the opinion and judgment of both courts, the court of appeals and the Supreme Court of Tennessee, may be reversed and that the action of the chancellor may be affirmed.

Mrs. Jesse Miles,
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Memphis, Tennessee,
Attorney for Mrs. Jesse Miles.

HAL S. BUCHANAN,
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LOUIS E. MILLER,
St. Louis, Missouri,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1940.

No. _____.

MRS. JESSE MILES, PETITIONER,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY,
DEFENDANT.

BRIEF IN SUPPORT OF PETITION.

This brief, in support of the petition for a writ of certiorari, seeks to reverse the judgment of the court of appeals, and Supreme Court of Tennessee, which granted an injunction restraining Mrs. Miles from testifying, aiding or taking any part whatever in the prosecution of the suit filed by R. R. Adams, administrator of the estate of Paul H. Miles, deceased, in the law court of St. Louis, Missouri, under the Federal Employers' Liability Act. The Tennessee courts based their action upon inapplicable law and failed or refused to follow the plain language of this federal law and the federal courts' interpretation and construction of said law, which have become a part of said statutory law.

STATEMENT OF CASE.

In interest of brevity Your Honors are respectfully referred to the petition for a writ of certiorari herein in which is recited a statement of facts, as well as statement of history of case. The statute involved is Section 6, Act, 1910 (45 U. S. C. A. 56).

SUMMARY OF ARGUMENT.

Federal Question.

The questions involved in this Miles case necessarily involve the interpretation and application of the United States Constitution, an act of Congress, and the federal courts' constructions of this act, and State of Tennessee law, as declared by its appellate courts, is inapplicable.

Florida Power & Light Co. v. *Miami*, 305 U. S. 644.

Pederson v. *McGraw*, 308 U. S. 313.

Stoll v. *Gottlieb*, 305 U. S. 165.

Carpenter v. *Shaw*, 280 U. S. 363.

Russell v. *Todd*, 309 U. S. 280.

Were Federal Questions Properly Raised?

Ground 8 of demurrer, which the Supreme Court of Tennessee held in 1939 could be relied upon in answer (174 Tenn. 687, l. c.) and which was relied upon in answer, and sustained by chancellor, pointed out that "there was no equity on the face of the bill," and this brought into view every question that can be raised by a demurrer.

C. & O. R. Co. v. *Vigor, Admr.*, 17 Fed. Supp. 602, 90 F. 2d 7, c. d. 302 U. S. 705, 58 S. Ct. 26, 82 L. Ed. 545.

Waugh v. *University*, 105 Miss. 623, 62 So. 827, L. R. A. (N. S.) 1915D, 588, 237 U. S. 589, 35 S. Ct. 720, 59 L. Ed. 1131.

Demurrer is proper pleading in Tennessee to question or challenge a bill in equity to enjoin a suit at law. Sec. 10387, Code of Tenn., *Gregory* v. *Merchants St. Bank*, 135 S. W. 2d 465, 23 Tenn. App. 573, c. d. S. Ct.; *American Express Co.* v. *Fox*, 135 Tenn. 489, 87 S. W. 117 Ann. Cas. 1918B, 1148. Can State Practice or Decissions Enlarge or Diminish and Destroy Federal Rights? State practice or decisions of federal rights growing out of acts of Congress, can not be enlarged or diminished by such names as state courts give to remedies or the distinction made between them by state practice.

Carpenter v. *Shaw*, 280 U. S. 363.

Stratton v. *St. Louis S. W. R. Co.*, 284 U. S. 530, 534.

Kloeb v. *Armour*, (Dec. 9th, 1940), 85 L. Ed. 156.

Tennessee Court of Appeals and Supreme Court say that they have an inherent equity jurisdiction to take from Mrs. Miles that which Congress has given her and the federal courts' construction or interpretation of this federal right, at least that is just what they did.

Federal Questions Were Raised Not Only in the Demurrer, But Answer at the Threshold of This Litigation, and the Evidence Was Not Conflicting, and the Supreme Court Can and Will Perform Its Proper Functions, and Protect These Federal Rights of Mrs. Miles.

Norris v. *Alabama*, 294 U. S. 587, 55 S. Ct. 579.

Chicago, M. & St. P. Ry. Co. v. *Coogan*, 271 U. S. 472, and cases cited.

Medrich v. *Lowenstein*, 232 U. S. 236.

Toledo, etc., R. Co. v. *Slavin*, 236 U. S. 545.

Stoll v. *Gottlieb*, 305 U. S. 165.

Great Northern R. Co. v. *Wash.*, 300 U. S. 154.

Consolidated Textile Corp. v. *Gregory*, 289 U. S. 85.

Hayne v. *Committee*, 307 U. S. 496.

Nickey v. *Miss.*, 292 U. S. 393.

Was It in the Power of Tennessee Courts to Decide Whether the Missouri Courts Had Jurisdiction?

It was admitted in the Illinois Central Railroad Company bill that it was doing an interstate business in St. Louis, Missouri (and by the chief auditor's uncontradicted testimony from the railroad's records), that it did a million and a half dollars per year business when sued and the validity of the process of the Missouri courts was a matter solely with that court and not Tennessee courts.

So. Pac. R. Co. v. *Klinge*, 55 F. 2d 85, c. d. 290 U. S. 657.

Int. Harv. Co. v. *Ky.*, 234 U. S. 579.

Hoffman v. *Mo. ex rel. Foraker*, 274 U. S. 44.

Tennessee courts should have finally determined the questions in 1939 and not prolonged this litigation nearly three years.

Did the Act of Congress Give the Choice of the Courts to Plaintiff or Railroads?

The Supreme Court has answered:

"The grant of concurrent jurisdiction implies that in the first instance the plaintiff shall have the choice of the court. As an incident, he is entitled to whatever remedial advantage inheres in that particular forum. *M. & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 60 L. Ed. 961."

Mo. ex rel. R. Co. v. *Taylor*, 266 U. S. 200, 45 S. Ct. 47, 69 L. Ed. 247, 42 A. L. R. 1232.

The Tennessee courts took this "choice of courts" from the plaintiff, Mrs. Miles, and Santa Claused it to the Illinois Central Railroad Company, and they took this "remedial advantage" (a jury verdict right in Missouri of nine jurors) from Mrs. Miles and gave it to the Illinois Central Railroad Company of requiring 12 jury verdict in Tennessee. Is not this a diametrical conflict

between Tennessee courts' holding and that of Supreme Court of United States on this act of Congress?

Are Not the Rights of Mrs. Miles Fixed by the Act of Congress Whether Suit Is Begun and Maintained in a Federal or State Court? Do Not These Rights Come from the Same Womb of Creation?

The right to sue and maintain such suit under this Federal Employers' Liability Act in the federal court is no more legitimate than the right to sue and maintain such suit in a state court, otherwise Art. I, Sec. 8, Subsec. 19, and Art. VI, of U. S. Const., are "a mere scrap of paper."

State courts have held:

> "The Federal Employers' Liability Act expressly conferred upon the defendant in this suit the right to bring her action for damages or compensation in the court in which she brought it. * * * We cannot assume that the Congress of the United States in allowing such an action to be brought in the district in which the defendant shall be doing business at the time of the commencement of such action did not have in mind the inconvenience that would result in almost if not quite every case, from bringing the suit elsewhere than at the place where the cause of action arose."
>
> *Lancaster, Rec. R. R.*, v. *Mrs. Dunn, Admr.*, 153 La. 15, 95 So. 385.

This unanswerable interpretation of this act of Congress was cited, approved and followed by Judge Underwood in *C. & O. R. Co.* v. *Vigor, Admr.*, 17 Fed. Supp. 602, affirmed 90 F. 2d 7, c. d. 302 U. S. 705. In Eighth Circuit, *Schendel* v. *McGee, D. J.*, 300 Fed. 273, the federal court construed the act:

> "We assume Congress could provide that actions in the federal courts should be brought *at places where the same would not constitute a burden on*

commerce, but Congress *has not done so. It has given the right* under the Federal Employers' Liability Act, hereinbefore discussed, to an injured party, or in case of his death to the duly constituted representative, *to maintain* an action for damages *in the courts of the district where the defendant is doing business at the time the suit is commenced.* We are not concerned with the *justice*, or the *wisdom* of such legislation. It being the law, it is the court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case."

Cf. *So. R. R. Co.* v. *Cochran, Judge*, 56 F. 2d 1019.

To the same effect are also the following cases:

Norris v. *Illinois Central R. Co.*, 18 F. 2d 584 (D. C. Minn.).

Trapp v. *B. & O. R. R. Co.*, 283 F. (655) (D. C. Ohio).

Connelly v. *Central R. Co. of New Jersey*, 238 Fed. 932 (D. C. New York).

In the Trapp case, Judge Westenhaver investigated and discussed the *intention of Congress as set forth in the congressional record*, as did Mr. Justice Stanley Reed in the case of *U. S. A., Interstate Commerce Commission and Others* v. *American Truck Association*, 310 U. S. 534, 84 L. Ed. 1345.

The Supreme Court of Iowa in the case of *Payne, Agent*, v. *Knapp*, 197 Iowa 737, 198 N. W. 62, overruling its former two decisions, *Spoor* v. *Chicago, Rock Island and Pacific Co.*, 191 Iowa 1134, 183 N. W. 580, and *Wabash R. Co.* v. *Peterson*, 187 Iowa 1331, 175 N. W. 533, said:

"But in view of *the holding that the act of Congress confers a right that cannot be taken away by state legislation* upon a claimant to bring an action under the Federal Employers' Liability Act in any federal court designated by the act, and also gives concurrent jurisdiction to any state court of competent jurisdiction, it must follow *that the latter right is also one that the state cannot by legislation*

impair. In other words, since the act confers concurrent jurisdiction of actions brought under it upon certain designated federal courts, and also upon certain state courts of competent jurisdiction, the right being given by federal statute, to resort to the latter must be as immune from state prohibition as is the right to enter the former. See *Spokane & I. E. R. Co.* v. *Campbell*, 241 U. S. 497, 35 S. Ct. 683, 60 L. Ed. 1125; *Erie R. R. Co.* v. *Winfield*, 244 U. S. 170, 37 S. Ct. 556, 61 L. Ed. 1057, Ann. Cas. 1918B, 662.

"With respect to a right arising under the Constitution or laws of the United States the *decision of the courts of the United States is controlling upon the state court*" (citing numerous cases).

The same was held by the courts of Minnesota, *State ex rel. Schendel* v. *District Court*, 156 Minn. 380, 194 N. W. 780, and the latter case *Peterson* v. *Ry.*, 244 N. W. 823, and the Supreme Court of Illinois, *Taylor* v. *So. Ry. Co.*, 350 Ill. 139, 182 N. E. 805, reached the same conclusion, but the appellate courts of Tennessee state a different rule of law and reach a different conclusion than did the courts of Iowa, Minnesota and Illinois. Tennessee appellate courts have misinterpretated and misconstrued this federal right, growing out of this federal act of Congress which creates liability and venue jurisdiction.

But we need not pursue this question further in this Miles case because it is not an *open question* as both the Supreme Court of Missouri and the Supreme Court of the United States have settled the question as to the *state courts of Missouri*. *Hoffman* v. *Mo ex rel.*, 309 Mo. 625, and 274 U. S. 44, and the matter is *stare decisis*.

Especially is the matter not debatable, since *McKnett* v. *St. L. & S. F. R. Co.*, 292 U. S. 230, 78 L. Ed. 726, which reversed the Supreme Court of Alabama which closed its doors to McKnett, who was injured in Tennessee, but who sought to enforce a federal right in the Alabama courts, in which the court said:

"The Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced. The plaintiff is cast out because he is suing to enforce a federal act. A state may not discriminate against rights arising under federal law."

Congress Constitutionally and Lawfully Created This Federal Right—Liability, and Created the Venue Jurisdictional Statute.

Congress said that a suit could be brought and maintained in either state or federal court of the several states and could not be removed from a state court chosen by plaintiff to a federal court in that district.

Therefore under this *express*, not implied, language, this venue jurisdictional statute gave this absolute right to the injured employee or his administrator—the right to sue in any state court where the defendant was found doing business, and the removal statute, in these federal employers' liability cases, was, thereby, *expressly amended*. This was expressly held in *Teel* v. *C. & O. Ry. Co.*, 204 Fed. 918, 47 L. R. A. (N. S.) 21; *St. Joseph & G. I. R. R.* v. *Moore*, 243 U. S. 211; and *Moore* v. *C. & O. R. Co.*, 291 U. S. 205. To quote the language of what the Supreme Court of Illinois held:

"The cause of action is statutory liability there but under that act *jurisdiction is specifically given* to certain federal courts and the venue in such courts limited. Yet an existent concurrent jurisdiction in the state courts is recognized and jurisdiction is *not given by the act to any specified state courts* or the *venue in such state courts limited thereby.*"

Taylor v. *So. R. R. Co.*, 350 Ill. 139, 182 N. E. 805.

The language of the act creating this right, liability and remedy might well have been so worded as to place the jurisdictional venue rights in the state

where the cause of action arose. But it did not so state, but expressly says that the jurisdiction of the federal courts under this act:

> "Shall be concurrent with that of the courts of *the several states.*"

Therefore the words "The courts of *the several states,*" was put with a purpose of placing the state courts of competent general jurisdiction, not probate courts nor equity courts, nor bankruptcy courts, but courts of *common law* and *general jurisdiction* upon the same equal foundation and duty to try these Federal Employers' Liability Act cases as the federal courts. And if the right and remedy is legitimate in the federal court it can not be illegitimate in state courts because they came from the same womb of creation. And if the cause of action cannot be enjoined in the federal court, it is trying to make a distinction without a difference to say that it can be enjoined if brought and maintained in a state court with this express provisional act of Congress. That great Chief Justice Marshall, in the epoch history making case of *McCullough* v. *Maryland,* 4 Wheat. 316, 4 L. Ed. 579, said:

> "The power to create, implies the power to preserve."
>
> c. & d., *U. S., Interstate Commerce Commission, and Intervenor, Fair Labor Hour Wage and Hour Admr.,* v. *American Trucking Ass.,* 310 U. S. 534, 84 L. Ed. 1345.

But no implication is necessary in these cases because we have the positive and express language saying that the venue jurisdiction may be exercised in the courts of "*the several states,*" where, "the defendant is found doing business."

The State of Tennessee and its courts could not have created this liability as that belongs solely and alone to the Federal Government under its Constitution. The effort to enjoin such suits has no foundation in sound law

and logic because the legislature, one arm of the state, would be powerless to destroy this federal right, and the courts of a state could no more destroy this federal right than could the other arm of government, the legislative.

In the case of *A., T. & S. F. R. Co.* v. *Sowers,* (March 1, 1909) 213 U. S. 55, 70, 53 L. Ed. 695, 702, 29 S. Ct. 397, it was held that the State of New Mexico by legislative act created liability but could not, under the Constitution, *confine that created right to the state courts of New Mexico.* This was early determined by this court in *Dennick* v. *Central R. R. Co.,* 103 U. S. 111, 26 L. Ed. 439, where the courts said:

> "It would be a dangerous doctrine to establish that in all cases where the several states have substituted the statute for the common law, the liability can be enforced in no other state but that where the *statute was enacted* and the *transaction occurred.*"

This was evidently recognized by Congress composed mostly of lawyers because the Sowers case was determined more than a year before the Federal Employers' Act of April 6, 1910.

A subsequent case in 1914 of Tennessee, *C. I. R. R. Co.* v. *George,* 233 U. S. 354, 58 L. Ed. 997, where Alabama created liability but statute tried to confine the remedy solely and exclusively to the courts of that state and for the same reasons, the Supreme Court rejected this statutory confinement of the cause of action of the state courts as this was unconstitutional and void.

Therefore, the legislative branch of government that created these rights and remedy, in a state, cannot confine it to the state courts. We say that a court of equity is neither concerned with and has not power to confine the cause of action to the state courts where it arose and enjoin the prosecution of that cause of action in another state where the defendant is found doing business, as in this case, a million and a half dollars' worth of business in St. Louis, Missouri.

Equity Must Follow the Law and Cannot Strike Down and Destroy Statutory Enactments.

If this could be done, no act of the legislature and no act of Congress would be safe or valid. If courts of equity, exercising what the Tennessee courts say—"an inherent right of equity," could mould their idea as to what the law ought to be or is, in place and stead of the legislative branch of government, it would not only be in conflict with the legislative act but the *state militia* would conflict with the *marshals* of the court of appeals and the Supreme Court trying to enforce the law as each department saw it. The Supreme Courts and lower federal courts have settled this question many years ago as follows:

> "Whenever the rights or situation of parties are chiefly defined and established by law, *equity has no power* to change or unsettle those rights or that situation but in all such instances the maxim *aequitas sequitur legem* (equity follows the law) is strictly applicable" (102 Fed. 420).
>
> *Gamewell and Long Telephone Co.* v. *City of New York*, 102 Fed. 420, 42 C. C. A. 405.
> *Aldrich* v. *Campbell*, 97 Fed. 660, 38 C. C. A. 847.
> *Maginac* v. *Thompson*, 15 How. 281, 14 L. Ed. 696.
> *Reece* v. *Watertown*, 19 Wall. 107, 22 L. Ed. 72.
> *Hedges* v. *Dixon Co.*, 150 U. S. 182, 14 S. Ct. 71, 37 L. Ed. 1044.

This question, "equity will follow the law" and will not overrule or destroy or repeal the laws, was announced as sound in this state in *Gilliam* v. *Tisdale*, 1 Yerg. 288, and in *Henderson* v. *Overton*, 2 Yerg. 394, and settled this as law more than one hundred years ago, but this applicable law was not applied by the Supreme Court and Court of Appeals of Tennessee and said courts failed or refused to apply to Mrs. Miles, in this case, the *sound applicable law*, but they did apply *inapplicable law*.

No Substantial, Material Grounds Are Alleged in the Bill for an Injunction or Sustained by the Evidence for an Injunction That Warrant the Granting and Maintaining of an Injunction Against This Federal Right.

The Eighth Circuit Court of Appeals and the Supreme Court of Iowa, where a state statute or the public policy of the state attempted to confine causes of action, arising in that state, to the state courts of that state, said:

> "The Iowa public policy can not destroy this federal right. In a conflict between such policy and a federal right given to a citizen of Iowa the public policy must yield. The constitution and the laws made thereunder are the supreme law of the land and are as much the law of the state as they are of the state enactments" (see Art. VI, U. S. Const.). 292 Fed. 326.
>
> 197 Iowa 737, 198 N. W. 62, overruling its former three decisions sustaining injunctions.

In this Miles case, "the jugular vein" or "the hub of the case" in pleading is well stated by the Supreme Court of Tennessee quoting from the bill in *I. C. R. Co.* v. *Miles*, 174 Tenn. 676, as follows:

> "It was further alleged that a defense of the suit brought by the administratrix as aforesaid would necessitate the transportation of many witnesses from Memphis to St. Louis, that numbers of these witnesses were employees of complainant railroad company, that it could not compel the attendance of necessary witnesses at a trial in St. Louis, and that the transportation of its employees to testify at St. Louis would disrupt its service, and that a trial of this case at St. Louis would put the complainant to great inconvenience and expense and would be an undue burden on interstate commerce."

This same pleading and contention was made in *Dimmit Hoffman* v. *Mo. ex rel. Foraker, Admr.*, 309 Mo. 625, 274 U. S. 20, and such contention touched the

trial judge, and he dismissed the Foraker lawsuit in Missouri. But the Supreme Court of Missouri and the Supreme Court of the United States reversed Judge Hoffman, and though it was expensive the defendant claimed it would be deprived of eleven of its valuable witnesses' testimony and it would be a great burden on interstate commerce and would be inconvenient and inequitable to let the suit be prosecuted by both the Supreme Court of Missouri and the Supreme Court of the United States, said this was not sufficient grounds and reversed the trial court.

The railroads have been dissatisfied with this act of Congress ever since it was passed and they have shown their dissatisfaction by every contention that could be made in lawsuits to prevent the effectiveness of this act of Congress to injured litigants.

In the case of *So. R. R.* v. *Cochran*, (1932) 56 F. 2d 1019, it was charged, to defend the case 417 miles from where the injury took place, that it would require over $2,000 as expenses, and that this expense money coudl not be recovered from the injured employee; and that it had *fifteen* witnesses whose oral testimony was absolutely necessary; and that it took *twenty-seven hours to travel* from Spartanburg, South Carolina, to Catlettsburg, Kentucky; and that the absence from the place of their employment of these witnesses would place a burden upon railroads; and cause undue interference with interstate commerce; and also deprive it of its rights under the fourteenth amendment, and the court answered:

> "It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction upon a federal court is to place a burden upon interstate commerce, the power for that purpose exists, and the remedy is legislative and not judicial. The precise question here presented was considered by the Circuit Court

of Appeals for the Eighth Circuit in *Schendel* v. *McGee, District Judge,* 300 Fed. 273, 278. It was there said:

> 'We assume Congress could provide that actions in the federal courts should be at places where the same would not constitute a burden on commerce, but Congress has not done so. It has given the right under the Federal Employers' Liability Act, hereinbefore discussed, to an injured party, or in case of his death to the duly constituted representative, to maintain an action for damages in the courts of the district where the defendant is doing business at the time the suit is commenced. We are not concerned with the justice or the wisdom of such legislation. It being the law, it is the court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case.'

To the same effect are also *Norris* v. *Illinois Central R. Co.,* 18 F. 2d 584 (D. C. Minn.); *Trapp* v. *B. & O. R. R. Co.,* 283 Fed. 655 (D. C. Ohio); *Connelly* v. *Central R. Co. of New Jersey,* 238 Fed. 932 (D. C. New York).

(3, 4) Concluding that jurisdiction to try the case exists, has the defendant any discretion to refuse to exercise it? We think not. The existence of jurisdiction, when otherwise adequate to the occasion, created an implication to exercise it. *Second Employers' Liability Cases,* 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44."

In 1937, *C. & O. R. Co.* v. *Vigor, Admr.,* 90 F. 2d 7, c. d. 302 U. S. 705, 58 S. Ct. 26, 82 L. Ed. 545, the same averments were made in the bill as were made in this Miles case, yet the court answered:

> "The plaintiff, it is true, may suffer some inconvenience or be put to extra expense in producing witnesses to testify in court in the Indiana case, but it is to be presumed that Congress considered such probable inconvenience and expense in placing jurisdiction of the action in any district in which the defendant should be doing business at the time. We

held in *Southern Railway Company* v. *Cochran*, 56 F. 2d 1018, that the filing of a suit in such a jurisdiction, even though it was inconvenient to the defendant, was not enough to justify a court of equity in enjoining its prosecution in the face of the statute giving the right to bring the action in that jurisdiction."

Three times the same question as raised in the Miles case has been presented to the Supreme Court of the United States because of inconvenience, expenses and witnesses, and, etc., and the court has said:

> "As a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the state and retain or refuse jurisdiction according to the relative inconvenience of the parties. *Denver & R. G. W. R. Co.* v. *Terte, supra*, 284 U. S. 287, 76 L. Ed. 297, 52 S. Ct. 485. *Hoffman* v. *Mo.*, 274 U. S. 21, 71 L. Ed. 907." 78 L. Ed. 1402, 292 U. S. 511.
>
> *National Milling Co.* v. *Columbia Milling Co.*, 292 U. S. 511, 54 S. Ct. 797, 78 L. Ed. 1396.

In the *National Milling Co. Case, supra*, the court further answered in the scholarly and terse language of Mr. Justice Cardozo:

> "Such a suit may be a burden, but oppressive and unreasonable, it is not."

In *Chicago, M. & St. P. Ry. Co.* v. *Schendel*, 8 Cir., 292 Fed. 326, 334, the court said:

> "The mere hardship of defending a suit brought elsewhere than in the district where plaintiff or witnesses reside is hardly sufficient to warrant the interference of equity. If so, jurisdiction given by Congress could be limited in practically every case."
>
> Cf. *So. Ry. Co.* v. *Painter, Admr.*, 117 F. 2d 106.

It would, indeed, create an anomalous situation in the law, if the courts of Missouri, which have general

jurisdiction and perfect jurisdiction to try these federal employers' liability action cases and its duty is mandatory under the act of Congress and the constitutional provisions (see *Hoffman* v. *Foraker*, 274 U. S. 21, 309 Mo. 625, as settled in Missouri, and a *stare decisis* proposition), the Tennessee courts, as they have done, can prevent that court from exercising effective jurisdiction. If this can be done, and is permitted in this case to stand as the law, then, indeed, the jurisdiction given by Congress can be limited or destroyed by any state court which sets itself up to be czar or dictator to the people of the United States on interstate commerce transactions and Art. I, Sec. 8, Subsec. 19, and Art. VI of U. S. Const., are rendered ineffective, and "a mere scrap of paper."

In the case of *Rader* v. *B. & O. R. R. Co.*, 108 F. 2d 980, c. d. April 1, 1940, 309 U. S. 682, the same averments were made for an injunction that have been made in this Miles case, and the injunction suit filed in the Ohio state court at the instance of the *B. & O. R. Co.* v. *Rader*, was made perpetual on January 25, 1939, yet the federal courts, Northern District of Illinois, treated this injunction suit as absolutely *without power and void*, and the Eighth Circuit Court and the Supreme Court affirmed that action and held that such injunction suit was not protected by Art. IV, Sec. 1, of the U. S. Const., which requires full faith and credit be given to the various state courts' records.

In *Taylor* v. *A., T. & S. F. R. Co.*, 292 Ill. App. 457, 11 N. E 2d 610, c. d. 58 S. Ct. 842, 82 L. Ed. 528, where Taylor recovered a judgment of $50,800 in the state courts of Illinois, under Federal Employers' Liability Act, and the injunction in the state court of Kansas from prosecuting his suit in Illinois was made final and perpetual, yet the courts of Illinois and the Supreme Court of the United States, by denying certiorari, held that *the injunction suit was not entitled to full faith and credit,*

otherwise the Kansas suit would have annulled and rendered this federal right granted under this federal statute constitutionally enacted, ineffective, limited and in fact, destroyed.

Tennessee courts' injunction in this Miles case is bound to be void for want of power because the Tennessee courts could not have the power to take away a federal right granted by Congress, but that is just what these Tennessee appellate courts have done with the most brilliant man on the bench, Mr. Justice De Haven dissenting.

And in the *B. & O. R. R. Co.* v. *Kepner*, 137 O. St. 409, c. d. April 14, 1941, 85 L. Ed. 750, the railroad claimed that to defend the case where it was brought would cost $4,000 (and this would double what the railroad alleged in the Cochran case). And it claimed that in its bill that it had over *twenty-five witnesses* that had to travel over *700 miles;* that it would have to take *numerous physicians, surgeons, radiologists,* and *hospital attendants,* and others, who gave Kepner medical aid, and numerous other railroad witnesses, who had inspected the premises at the said accident. In other words, these great railroad lawyers who have been dissatisfied with the Federal Employers' Act for the last thirty years have just picked from one case to another, and in the Kepner case they had picked its ideal case to raise the questions (see record and cause 678, October Term, 1940, p. 3 of the record). Yet the Supreme Court of Ohio and the Supreme Court of the United States held that it would not be equitable to not follow the law, or legislate away, by equitable process, that which Congress had enacted under its constitutional authority.

The *Vigor Case, supra,* was determined upon the bill and answer and full proof, the same as the Miles case. And if it would not be inequitable or if equity has to follow the law, and not destroy the law, then, indeed Tennessee appellate courts have committed monumental error by

setting up their idea as to what would be right and just in preference to what Congress, exercising its constitutional authority, has granted. Thus the Tennessee appellate courts have under what they call "inherent equity jurisdiction," sliced off, pared down, uprooted, and destroyed this federal right given Mrs. Miles by the constitutional act of Congress.

Wise courts have said that the remedy is *legislative and not judicial* (see *Cochran Case* and *Vigor Case, supra*), but Tennessee courts conflict with this idea and say that they will not leave the railroads to their remedy before the legislative branch of United States Government, but they will step in and annul, destroy, and uproot and legislate away their superior jurisdiction—Congress.

Where federal rights are involved, the Supreme Court has many times said that it is not and will not be bound by state courts' characterization given, nor would the court be relieved from considering the real nature of the right and the effect of the state courts' decision upon this federal right.

Carpenter v. *Shaw*, 280 U. S. 363, S. Ct. 121, 74 L. Ed. 478, rev. 134 Okla. 29.

Stratton v. *St. L. & S. W. R. Co.*, 284 U. S. 530, 52 S. Ct. 222, 76 L. Ed. 465.

Kloeb v. *Armour & Co.*, (Dec. 9, 1940) 85 L. Ed. 156.

When a federal question is present in the case appealed from state courts, as well as nonfederal questions, the Federal Supreme Court must determine whether nonfederal grounds independently support judgment of the state court. *Banks* v. *Weaver*, 51 S. Ct. 252, 282 U. S. 765, 75 L. Ed. 690, affg. 119 Neb. 153.

If Tennessee courts could apply their idea of equity to this federal right growing out of this federal statute and say that it was a nonfederal ground, then indeed the Supreme Court of the United States would be sheared of its usefulness on federal questions and federal rights in the United States.

Passing on a federal right, the Supreme Court regards that action of the state court must be tested by the operation and effect of the state courts' opinion and decree. *Near* v. *State of Minn.*, 283 U. S. 697, 51 S. Ct. 25, 75 L. Ed. 1357, rev. 179 Minn. 40.

If the effect of the Tennessee appellate courts in enjoining this suit filed in the state courts of Missouri is sustained then, indeed, the two years' statute of limitations for such suits under the Federal Employers' Liability Act (45 U. S. C. A. 56), applies to a new suit, as Paul H. Miles died June 5, 1938. Thus a greater injury will be inflicted upon Mrs. Miles by granting the injunction by the Tennessee appellate courts than to the railroad company by denying it as expressly held, in *Louf* v. *E. G. Skinner*, 303 U. S. 323, 58 S. Ct. 578, 82 L. Ed. 872. And if, in fact, the amended limitation statute of the same act which has been passed *since Mr. Miles's death* could be applied in Mrs. Miles's favor, still the three years' statutory limitations would expire June 4, 1941, and by the operation and effect of the Tennessee appellate courts' decision a new suit would be barred, and Mrs. Miles's rights would be destroyed. In *Norris* v. *State of Ala.*, 55 S. Ct. 579, 294 U. S. 587, 79 L. Ed. 1074, rev. 229 Ala. 226, this court held that where federal rights are involved in a state court, this court must inquire whether the right was denied by express terms or substantially so in effect and result, and if necessary, the evidence in the record must be examined.

There is no contradictory evidence in this Miles record, no witnesses contradicted anything to which any other witness has testified. Therefore, the record comes to this court not upon a contradictory fact question, but, in fact, a question of law solely. See the case of *Great Northern R. Co.* v. *State of Washington*, 300 U. S. 154, 57 S. Ct. 397, 81 L. Ed. 573, rev. 184 Wash. 710; and *Consolidated Textile Corp.* v. *Gregory*, 289 U. S. 85, 53 S. Ct. 529, 77 L. Ed. 1047, rev. 209 Wis. 476.

It was held that the Supreme Court must ascertain for itself the facts disclosed by the record, and whether a federal right has been denied by state courts. The Supreme Court is not concluded by a finding of fact and law by the state court, but must examine the evidence to ascertain whether it supports state courts' decision or not against this claim of federal rights.

United Gas Public Service Corp. v. *State of Texas*, 303 U. S. 123, 58 S. Ct. 483, 82 L. Ed. 702.

And in *North Carolina R. Co.* v. *Zachary*, 232 U. S. 248, 34 S. Ct. 305, 58 L. Ed. 591, Ann. Cas. 1914C, 159, it was expressly held that where a federal question was raised before the trial court, Supreme Court has jurisdiction to and will review the judgment of state courts. Chancellor Bejach sustained these federal questions and the Tennessee appellate courts overruled them, in this Miles case.

Summary of State Decisions Granting or Denying Injunctions for the Last Thirty Years.

It has already been called to Your Honors' attention in the petition for certiorari that every federal court that has decided the question as to whether or not an injunction could or should be maintained against this federal right of bringing and maintaining a lawsuit in a district other than where the cause of action accrues have uniformly held that such injunction can not be maintained. In *B. & O. R. R. Co.* v. *Bole*, 31 Fed. Supp. 221, Judge Baker, who was furnished no brief except by the railroad, held that *an injunction could be maintained* but on January 15, 1941, in the case of *B. & O. R. R. Co.* v. *Jesse C. Clemm and Henry G. Shores*, overruled his opinion in the Bole case, and refused to follow the *Crandall Case*, 53 F. 2d 969, and he followed the Vigor case (see 36 or 37 Fed. Supp.), not yet printed.

The first case sustaining an injunction was December 10, 1918, *Reed, Admr.*, v. *I. C. R. R. Co.*, 182 Ky. 155, but

the court in this case did not consider the case of *Connelly* v. *Central R. R. Co.*, 238 Fed. 652, which was decided two years before that.

No doubt but what the Kentucky court would follow the *Cochran* and *Vigor Cases*, 56 F. 2d, and 90 F. 2d. The *Spoor Case*, 191 Iowa 1134, *Peterson Case*, 187 Iowa 1331, and *Payne, Agent*, v. *Knapp*, 195 N. W., were expressly overruled in 197 Iowa 797, citing and following the *Schendel Case*, 292 Fed. 326. In the *Nortini Case*, 334 Mo., decided in 1932, the court said:

> "The respondent has not favored us with either brief or argument."

Then the court proceeded to erroneously follow the railroad company's brief like Judge Baker did in the *Bole Case*, 31 Fed. Supp.

It does not appear that Missouri courts considered the *Schendel Case*, 292 Fed. 326, nor the subsequent case, 300 Fed. 273. No doubt the Missouri court would do like the Iowa court, and the Minnesota court, 165 Minn. 380, and 244 N. W. 823, and would follow the federal court's construction of this federal statute. The *McGinnley Case*, 175 Wis., a seven-judge court, and the *Ball Case*, 126 Kan., a seven-judge court, and the *Dunn Case*, 156 La., a seven-judge court; all three of these state courts *not then being given the benefit of the federal courts' construction* and interpretation *refused injunctions* and also refused to follow the Reed case from Kentucky. In *Railroad* v. *Baum*, 39 N. Mex. 22, the state court refused an injunction. The early Indiana case, *Kern* v. *Railroad*, 204 Ind. 595, did not cite and discuss the federal cases construing and interpreting this act of Congress and it overlooked the *Hoffman Case*, 274 U. S., and in the last case of *McConnelly* v. *Thomson, Trustee of Railroad*, 213 Ind. 16, *denying an injunction*, and said:

> "Such action, if effective, destroys a federal right of the litigant and obstructs the performance of a

> duty imposed by act of Congress upon a District Court of the United States. This is beyond the power of a state court."

The chief justice, who rendered this opinion, was on the Seventh Circuit Court of Appeals and took part in the decision of *Rader* v. *B. & O. R. Co.*, 108 F. 2d 980, c. d. 309 U. S. 682, which refused to give full faith and credit *to an injunction suit* because *it would destroy the federal rights granted by this act of Congress*, to say that a suit filed in accordance with said act the prosecution could be enjoined. The filing of such a suit in a state court could not be enjoined when the same mandatory duty was placed by the act of Congress, upon *the state court of Missouri* as expressly held in the *Hoffman Case*, 309 Mo. and 274 U. S., and expressly held the duty of a *state court of Connecticut* in *Second Employers' Liability Case*, 223 U. S. 1, and which has later been held, in the *McKnett Case*, 292 U. S., reversing 227 Ala. 349, which state courts closed their doors to McKnett, a citizen who lived in Tennessee, and who was injured in Tennessee, and brought his suit in Alabama state courts.

State courts have just *misconstrued this mandatory duty upon state courts* to hear and determine cases under the Federal Employers' Liability Act, *if they have general jurisdiction*. Of course, probate courts, equity courts, and any other special courts with special jurisdiction, could have *no such duty to perform but law courts of general jurisdiction must* entertain and try such cases. The Minnesota court, 156 Minn. 380, said:

> "Under the doctrine of the Second Employers' Liability cases, the state court must exercise its jurisdiction, if adequate to the occasion when a suitor comes to it. It is not a matter of its pleasure. It may not want his case. It may think the burden of trying it and the attendant expenses should be borne in another state; but there is a right in the suitor and a corresponding duty in the court, so the Supreme Court said:"

In the case of *Railroad* v. *Matzinger*, 136 O. St. 271, an injunction was sustained, but in the later case, *B. & O. R., Co.* v. *Kepner*, 137 Ohio, c. d. April 14, 1941, the *injunction was denied to the railroad company against* Kepner, prosecuting his suit in New York, 700 miles away from where the cause of action arose. It will be noted in this federal act, 45 U. S. C. A. 56, that Congress expressly provided:

> "And no case arising under this act and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

This was not only a repealing act, repealing the federal removal statute as to cases arising under this Federal Employers' Liability Act, but it also *expressly and mandatorily fixed jurisdiction in the state courts* that had *general jurisdiction*, and there cannot be any escape from this *mandatory duty*, under the *Second Employers' Liability Case*, 223 U. S. 1, the *Hoffman Case*, 274 U. S. 21, and the *McKnett Case*, 292 U. S. 230.

Liability and the *remedy* were created by the *same act* and the remedy is created to be enforced in either federal court or state court and it has been held:

> "Where the provision for liability is coupled with a provision for a specific remedy, that remedy and that alone must be employed."
>
> *Pollard* v. *Bailey*, 87 U. S. 520, 22 L. Ed. 376.
>
> *Stewart, Admr.*, v. *B. & O. R. Co.*, 168 U. S. 445.

In the last case it was said:

> "An action to recover damages for a tort is not local but transitory and can, as a general rule, be maintained wherever the wrongdoer can be found. *Demick* v. *Central R. Co.*, 103 U. S. 11, 26 L. Ed. 439."

Now, when Congress provided, as it had a right to do, that when an injured employee chose to bring his suit in a state court under the Federal Employers' Lia-

bility Act, *no power* existed to remove that case to federal court. In *McCullough v. Maryland*, 4 Wheat. 316, Mr. Chief Justice Marshall said:

> "The power to create implies the power to preserve."

Evidently Congress *intended to preserve this litigant's right* to not only bring but maintain his lawsuit in a state court, if he so chose such court, because the *act forbid* the railroad from *removing the cause to a federal court.* Unquestionably, it was the intention of Congress, by the express language used in the act, to give the injured employee or his administrator the choice of the federal courts or the state courts; and if he chose a state court, no court had a right to take this from him.

In the very recent case *Breisch* v. *Central R. R. Co., of New Jersey*, No. 384, October Term, 1940, decided by this court March 3, 1941, it is said:

> "The Federal Employers' Liability Act does give a right of action and *fixes the tribunal where it may be enforced. Moore* v. *C. & O. R. Co.*, 291 U. S. 205, Secs. 1 and 6, 45 U. S. C. A., 51, 56."

Conclusion.

Tennessee appellate courts have taken this "privilege" and "federal right" from Mrs. Miles, *to whom it was given* by the Act of Congress, and *have given it to the railroad*, in favor of whom the *"privilege"* or *federal right* was *not* granted; and we beg to quote Judge Underwoods' language:

> "Taking a privilege from one upon whom it is conferred by statute, and giving it to the opposite party against whom that specific privilege was granted."
>
> *C. & O.* v. *Vigor*, 17 Fed. Supp. 602, aff. 90 F. 2d 7, c. d. 302 U. S. 705.

In *C., M. & St. P. R. Co.* v. *Schendel, Admr.*, 292 Fed. 326, 339, the language of Justice Kenyon is appropriate:

> "If a state can compel a citizen to give up one federal right as a prerequisite to bringing suit in a federal court, it can compel him to give up all federal rights. It is a proposition fraught with amazing consequences."

As the act gives the same jurisdiction to the state court that it does to the federal court, to the injured employee or his personal representative, and provides that if the state court is chosen, the cause shall not be removed to a federal court; and if the Tennessee appellate courts can take this federal right granted by Congress, over which the State of Tennessee and its courts have no jurisdiction, over a matter involved in interstate commerce and beyond the power of states or state courts to legislate; then we are faced with the amazing consequences that *any rights given by Congress can be taken away by the state courts of Tennessee*, and notwithstanding U. S. Const., Art. VI, to contrary.

Both the *right* and the *remedy* provided by Congress comes from the *same womb of creation*, and one could not be lawful and the other unlawful; one could not be equitable (as all the federal courts have held), and the other could not be inequitable, as Tennessee courts have held. And regardless of the interpretations or constructions that Tennessee courts, Indiana courts, Ohio courts, and Kentucky courts may place upon this federal statute not created by their legislature, but created beyond their powers; and these state courts' interpretations and constructions of this federal statute must fall if they comply with or apply the federal courts' constructions and interpretations of this federal statute.

Since the cases, *Atchison, T. & S. F. Ry. Co.* v. *Sowers*, 213 U. S. 55, 29 S. Ct. 397, 53 L. Ed. 695 (one year *before* the Federal Employers' Liability Act was passed) and *Tennessee C. I. Ry. Co.* v. *George*, (1914) 233 U. S.

354, 58 L. Ed. 997, a state in its sovereign power can not create a right and confine that right to the courts of that state. The states have not the powers that the United States Constitution gives Congress, namely,

> "To make all laws which shall be necessary and proper for the carrying into execution the foregoing Powers."
>
> Art. I, Sec. 8, Subsec. 19.

And Art. VI,

> "and all the laws of the United States which shall be made in pursuance thereof, * * * shall be the Supreme law of the land, etc."

Is it possible that the so-called "inherent equitable powers of the state" are more supreme or are higher than the state itself, in the exercise of its full sovereign power?

Even if so, still, such equitable power can not supercede, annul, and destroy these federal rights given by constitutional authority.

The test and extent of equitable powers (where no federal statute was involved) were determined at the time that the Federal Employers' Liability Act became a law and were correctly stated by Chief Justice McClain:

> "But beyond the prevention of some *threatened evasion* of *some specific laws* of the *state intended to regulate the relations of its citizens to each other in some definite manner*, courts have been reluctant to interfere with the exercise of the undeniable right of a resident to go into the courts of another state to secure such relief as may there be available to him, and have not felt justified in scrutinizing his motive in doing so."
>
> *Jones* v. *Hughes*, 156 Iowa 684, 137 N. W. 1023, 42 L. R. A. (N. S.).

The Supreme Court of Louisiana stated the same test, in *R. R. Co.* v. *Dunn, Admr.*, 153 La. 15, 95 So. 385.

Tennessee court approved this test in Fox case but would not apply it in this Miles case.

Am. Ry. Co. v. *Fox*, 135 Tenn. 489, 87 S. W. 117, Ann Cas. 1918B, 1148.

Courts, either of law or equity, can not or never have, so far, justified an injunction on *motive* or *purpose* of the party in taking such legal action, as was lawful. *Railroad* v. *Vincent*, 116 Tenn. 317, collecting all state and federal decisions to 1905. And the Supreme Court has recently held:

> "But it is clear that the motive or purpose that actuated any or all of these parties in procuring a lawful and valid appointment (Mecom, as administrator) is immaterial."
>
> *Mecom, Admr.*, v. *Fitzsimmons Drilling Co. and Atlantic Oil Co.*, 284 U. S. 183, 52 S. Ct. 84, 76 L. Ed.

In Mrs. Miles's demurrer, as well as her answer and assignment of errors, the fourteenth amendment was invoked, that:

> "No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

The Tennessee appellate courts, in this Miles case, have abridged the privileges or immunities Congress has granted Mrs. Miles, and these courts are an arm of the State of Tennessee, and their acts challenge and conflict with this constitutional provision.

And congressional power over "interstate commerce" is exclusive and plenary, and no state, whether Legislative, Executive or Judicial Department, has the power to destroy. If Tennessee courts can regulate Mrs. Miles's clear, specific, express and constitutional right created by the womb of Congress, and take from her what Congress has given to her, and give this right to the Illinois

Central Railroad Company, then the "privileges" and "Immunities" will soon become, in the picturesque language attributed to Abraham Lincoln, "as thin as the homeopathic soup made by boiling the shadow of a pigeon that had starved to death." John Ruskin wisely said:

"Pride is at the bottom of all great mistakes."

We fear that Tennessee appellate courts, like some other state courts, have been unable to lay aside that pride to take unto themselves supreme power over federal rights which is a federal question. Wm. Pitt well said:

"Where law ends, tyranny begins."

Mrs. Miles was made a widow on June 5th, 1938, when her means of support was taken from her by the death of her husband, yet she has been deprived and delayed of her federal rights, created by the womb of Congress, for three years by the Tennessee appellate courts. Gladstone truly said:

"Justice delayed is justice denied."

With the fullest measure of confidence in the ends that will be reached by Your Honors, we most respectfully submit client's rights in the foregoing petition and brief.

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 272.

MRS. JESSE MILES ET AL., PETITIONERS,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY, RESPONDENT.

BRIEF FOR THE PETITIONERS ON THE MERITS.

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ACTS

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CONSTITUTION

United States Constitution, Article IV 8

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 272.

MRS. JESSE MILES ET AL., PETITIONERS,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY, RESPONDENT.

BRIEF FOR THE PETITIONERS ON THE MERITS.

This brief seeks to reverse the judgment of the Court of Appeals of Tennessee and the Supreme Court of Tennessee which granted the respondent's application for an injunction to restrain Mrs. Miles from directly or indirectly doing or performing any actions in connection with, counseling or advise with or in any manner communicating with the administrator or his attorneys for the purpose of, or any effort to prepare the case for trial of *R. R. Adams, administrator of estate of Paul H. Miles, deceased,* v. *Illinois Central Railroad Company,* now pending in the Circuit Court of St. Louis, State of Missouri (R. 12).

Certain pleas were filed by Mrs. Miles and her daughters and among them a demurrer extensively questioning the power and the propriety of the chancery court enjoining this cause of action which was granted under the

Federal Employers' Liability Act which act gave venue jurisdiction to the Missouri state court and the state court had no power or right to take that which the Congress had granted, and the federal courts have construed the act or giving the right under that jurisdiction that Paul H. Miles was granted while at his post of duty and while engaged in interstate commerce and the railroad company's original bill and amended bill set forth this fact that he was engaged in interstate commerce at the time of the injury which resulted in his death. The demurrer went forth and challenged the railroad company's right under this federal law to maintain said injunction because there was no equity on the face of the bill, and there were no names of the witnesses set forth, and there were no averments that the witnesses' testimony could not be taken by deposition as provided by the statutes (R. 21).

The chancellor overruled the demurrer, and, by exercising a discretion, granted an appeal to the Tennessee State Supreme Court which appellate court only has jurisdiction to pass on questions raised in a demurrer. The Supreme Court overruled the demurrer (174 Tenn. 676) but remanded the case to ascertain whether or not the railroad company was doing business in Missouri at the time it was sued, yet the original and amended bill of the railroad company admitted that it was engaged in interstate commerce and business in the city of St. Louis, Missouri, where sued (R. 2, 3, 8).

Upon remand of the case to the trial court, defendants relied upon the demurrer which the opinion and decree of the Supreme Court said they could rely (174 Tenn. 687), and they filed extensive answers raising every question as to the propriety and the jurisdiction of the chancery court to grant and maintain the injunction in this cause (R. 36-48).

Testimony was heard as to the convenience of the railroad company in trying the case in Tennessee, which Tennessee law incidentally requires twelve jurors to

render a verdict in civil cases while the statutory laws of Missouri, where the said suit was pending, requires only nine jurors to render a verdict in civil cases. While the Illinois Central Railroad Company meagerly charged that it was engaged in interstate commerce in St. Louis, Missouri, and the meagerness of this charge prompted the Supreme Court of Tennessee to remand the cause to ascertain what kind of business the railroad company was actually doing in Missouri under its averments of its original and amended bill (see 174 Tenn. 685). Defendants took the testimony of A. E. Lawler, general auditor of the Illinois Central Railroad Company (R. 105), who testified of the various officers, offices, and business transacted by the Illinois Central Railroad Company in St. Louis, Missouri, which showed in an uncontradicted manner that the railroad company operated many trains into the city of St. Louis and that its business amounted to $1,488,710.74 for the year in which it had been sued (R. 109).

When the cause was heard before the chancellor, he was constrained to hold that the railroad company was doing business in the State of Missouri, and further held that the prosecution of *R. R. Adams, administrator of the estate of Paul H. Miles,* v. *Illinois Central Railroad Company* will be oppressive and inequitable to the complainant and a burden on commerce and business of the complainant, but yet he sustained the demurrer and merits of the case, and dissolved the injunction, and dismissed the bill (R. 118).

The railroad company appealed to the court of appeals which had no jurisdiction on demurrer. The only assignment of error by the railroad company filed in the court of appeals was that to permit the Adams suit to be prosecuted in the Missouri court would result in additional oppression, injustice unnecessary and unquestionable, and that it would amount to a denial of justice (R. 119-120).

The court of appeals on July 1, 1940, reversed the chancery court and sustained the injunction sought by the railroad company (see opinion 120-122, decree, R. 133-134). Petition for certiorari was filed July 22, 1940 (R. 141), and four assignments of error (R. 143) to the Supreme Court of Tennessee raising one of the questions that has been raised in the demurrer and in the answer on the merits (R. 134-141). The Supreme Court of Tennessee, on January 11, 1941, denied certiorari to the court of appeals (R. 141-143). Petition for certiorari was filed in this cause July 14, 1941, and on November 10, 1941, certiorari was granted (61 S. Ct. 177).

SPECIFICATION OF ERRORS.

Your petitioner submits that the court of appeals and the Supreme Court of Tennessee were in error in the following respects:

(1) Both courts erred in an interpretation of the Federal Employers' Liability Act (45 U. S. C. A. 56).

(2) Both courts cited and followed dicta in 53 F. 2d 739 as being federal rules or decisions, and did not follow the true determinative interpretation of this fedderal statute by the federal courts in numerous other cases cited.

(3) Both appellate state courts of Tennessee erred in holding that it was proper and that they had jurisdiction to enjoin Mrs. Miles from aiding or taking any part in the prosecution of this St. Louis suit, of which under the federal statutes she would be the beneficiary because the Tennessee courts did not have jurisdiction to so enjoin, and further, it was not proper to enjoin upon the uncontradicted facts shown in said record (R. 143-141, incl.).

(4) The appellate court of Tennessee committed error in reversing the trial court, and in granting, and in sustaining the injunction in this case, because the cause of action enjoined came from an act of Congress, and the act of Congress that created the cause of action and venue jurisdiction covered the whole field, and the state courts of Tennessee could not cut off, pare down and destroy that jurisdiction which was granted by Congress (R. 134 incl.).

(5) The appellate court of Tennessee committed error in sustaining the injunction, because the privilege of venue jurisdiction granted by the legislative body of Congress which granted the rights pursued cannot be frus-

trated or prevented for reasons of convenience or expense to the railroad company, because the act of Congress and the construction of same by federal courts. This was a privilege which Congress had granted to Mrs. Miles, and the Tennessee courts took this privilege from her and gave it to the opposite parties, the railroad company, against whom the specific privilege was granted (R. 134-141, incl.).

(6) The appellate court of Tennessee committed error by holding that the injunction should be maintained because the suit filed in Missouri would be a burden against the railroad company being oppressive and unreasonable (R. 134-141, incl.).

(7) The appellate court of Tennessee committed error by granting a remedy to the railroad company which conflicted with the legislative act of Congress, and the Tennessee courts have granted to the railroad company in this case a remedy which should be sought by the railroad in the Halls of Congress and not in the courts, because the remedy is legislative and not judicial (R. 134-141, incl.).

(8) The appellate court of Tennessee committed material error because there was no equity on the face of the bill, and no substantial justifiable grounds shown in the uncontradicted evidence why injunction should have been maintained in this cause (R. 134-141, incl.).

(9) The appellate court of Tennessee committed error in not according to Mrs. Miles her federal rights, and in not following the interpretation of this federal statute, by federal courts for the last thirty years in some thirteen decisions; and the state courts characterization, and the operations and effect of the state courts' opinions and decree cannot slice off, pare down, uproot, and destroy this federal right given Mrs. Miles by the constitutional act of Congress, and the jurisdiction which has become a part of the act itself (R. 134-141, incl.).

SUMMARY OF ARGUMENT.

1.

The Federal Employers' Liability Act, as amended by Congress April 5, 1910, and which is involved in this lawsuit, provided as follows:

> "Under this act an action may be brought in a Circuit Court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing of such action.
>
> "The jurisdiction of the courts of the United States under this act *shall* be concurrent with that of the *courts of the several states*, and *no case arising under this act* and brought in *any* state court of *competent jurisdiction shall be removed* to any court of the United States" (45 U. S. C. A. 56).

2.

It will be noted from the above language that Congress provided:

> "And *no case arising under this act* and brought in *any state court of competent jurisdiction* shall be *removed* to any court of the United States" (45 U. S. C. A. 56).

The Tennessee courts removed by this injunctive process the lawsuit brought in Missouri where the defendant is doing business, to either the Federal Courts of Tennessee or the state courts of Tennessee and this destroys, if permitted to exist, the effect of the act of Congress.

3.

Thirty years ago the Supreme Court of the United States interpreted this act of Congress in the case of

Mondou v. *New York N. H. & H. R. Co.*, 223 U. S. 1, and reversed the Supreme Court of Connecticut, which state courts had general jurisdiction, and which courts determined jurisdiction in the state court to hear this federal right and remedy, and the courts, after discussing fully the supremacy clause of the United States (Art. IV, U. S. Con.), said:

> "When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for *all the people and all the states* and thereby established a *policy for all*.
>
> "We conclude that *rights arising* under the act in question (Federal Employers' Liability Act) may be enforced, *as of right*, in the *courts of the states* where their jurisdiction, as prescribed by local law, is *adequate* to the occasion."

A unanimous court, in interpreting and construing this act of Congress, in answering the contention that state courts could not try causes of action arising under this federal statute as well as federal courts, and there would be great confusion in the state courts trying to interpret this federal statute, the court answered this in the following determinative and conclusive language:

> "We are not disposed to believe that the exercise of jurisdiction by state courts will be attended by any appreciable inconvenience or confusion; but be that as it may, it affords no reason for *declining a jurisdiction conferred by law.*"
>
> 223 U. S. 58.

Thus it will be seen that the Supreme Court of the United States, in construing the supremacy clause of the Constitution, held and settled the proposition that state courts, if given general jurisdiction, by the state laws, *they must exercise that jurisdiction* and *could not exercise discretion*, and *not entertain the lawsuit* as the trial court saw proper. This important and controlling question in this Miles case is settled by both the Supreme

Court of the United States and the Supreme Court of Missouri.

In the case of *Dimmit Hoffman* v. *Mo. ex rel. Foraker, Admr.*, 309 Mo. 625, 274 U. S. 20, 71 L. Ed. 906. Judge Hoffman held that under the Missouri statutes that *he could exercise discretion*, and as the defendant company claimed that it had *eleven witnesses* that it would have to bring *from the State of Kansas* where the accident occurred and that *great inconvenience, expense, burden, and burden upon interstate commerce* would result if the Missouri trial court permitted the case to be tried there, and while this question was tried in that court and not in some other court, *the trial court was able to pass upon the question as could a court of equity.* The trial court was not important, but under the supremacy clause of the Federal Constitution, and under the statutory provisions of Missouri the trial court had *general jurisdiction* and *had no right to deprive Foraker*, the administrator, from proceeding in said state courts as was provided in the act of Congress.

This question having been settled by both the Supreme Court of Missouri and the Supreme Court of the United States, is *stare decisis*, and settles the question in this Miles case.

It is true that in the *Douglass Case*, 279 U. S. 377, where the State Statute of New York clothed its trial courts with the *discretion to hear and determine any case brought by nonresidents of that state, or decline same* and if the trial court exercised that discretion, the other courts could not control that discretion. That case, though three of the ablest judges of the court dissented, did not weaken the *Hoffman Case*, 274 U. S., nor did it weaken the *Mondou Case*, 223 U. S.

And in the last case, *McKnett* v. *St. L. & S. F. R. R.*, 292 U. S. 230, the Alabama courts were reversed where they did not permit McKnett, a Tennesseean, and who

was injured in Tennessee, to enforce his right under the Federal Employers' Liability Act in the Alabama court. This question, however, being therefore thoroughly adjudicated by Missouri's highest court and by the Supreme Court of the United States in the Hoffman case, where the Miles case, through R. R. Adams, administrator, is pending, is settled and not open to further argument. There is no state statute in Missouri where the Adams case is pending which attempts to exclude such cases, but, on the contrary, it recognized, under the supremacy clause, that the Missouri courts *must not and cannot exercise a discretion*, but must try the cases filed there. In the case of *B. & O. R. Co. v. Kepner*, 62 S. Ct. 6, 10, the Supreme Court, in an opinion by Mr. Justice Reed decided November 10, 1941, held:

> "It is obvious that no state statute could vary the venue and we think equally true that no state court may interfere with the privilege, for the benefit of the carrier or the national transportation system, on the ground of inequity, based on cost, inconvenience or harassment. When the section was enacted it filled the entire field of venue in federal courts. A privilege of venue granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense. If it is deemed unjust, the remedy is legislative, a course followed in securing the amendment of April 5, 1910, for the benefit of employees. This court held in *Hoffman v. State of Missouri ex rel. Foraker*, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905, that the burden on interstate commerce would be disregarded where the carrier had lines in the distant state. The importance of unhampered commerce is at least as great as that of a carrier's freedom from harassing incidents of litigation. Whatever burden there is here upon the railroad because of inconvenience or cost does not outweigh the plain grant of privilege for suit in New York."

The Kepner case was begun nearly two years after the Miles case was started in the Tennessee courts, but

the Tennessee courts delayed Mrs. Miles's case unnecessarily for two years and evidently the Kepner case was thought the best case for the railroads in existence in the United States to raise this question, as the railroads had charged that it would cost them four thousand ($4,000) dollars to defend that case in New York, and that it had approximately twenty-five witnesses that had to travel over 700 miles; that it would have to take numerous physicians, surgeons, radiologists, and hospital attendants, and others, who gave Kepner medical aid, and numerous other railroad witnesses, who had inspected the premises at the said accident. The railroads had pursued for thirty years, ever since this act was created by Congress, to have the courts undo what Congress had done and override what federal court decisions before the Kepner case had held against such a proposition, and the railroads were successful in a number of states, like Tennessee and were not successful in other state courts which followed federal court decisions which interpreted this act of Congress correctly. If the railroads had thought that this venue jurisdiction statute was unjust and an undue burden on railroads, *their remedy* was well marked and plain and they should have traveled to the *halls of Congress* for such *remedy* and *not to the courts of equity,* in which they had sought to undo what Congress had done.

4.

If the Amendment of April 5, 1910, Placed a Burden upon the Railroads Their Remedy Should Be Carried to the Halls of Congress and Not to the Courts of Equity to Override and Destroy the Law Enacted by Congress.

The Supreme Court in the *Kepner Case,* 62 S. Ct. 6, 10, in the opinion by Mr. Justice Reed answered this question as follows:

> "If it is deemed unjust, *the remedy is legislative,* a course followed in securing the amendment of April

5, 1910, for the benefit of employees. This court held in *Hoffman* v. *State of Missouri ex rel. Foraker*, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905, that the burden on interstate commerce would be disregarded where the carrier had lines in the distant state. The importance of unhampered commerce is at least as great as that of a carrier's freedom from harassing incidents of litigation. Whatever burden there is here upon the railroad because of inconvenience or cost does not outweigh the plain grant of privilege for suit in New York."

The Sixth Circuit Court of Appeals, in the case of *So. R. Co.* v. *Cochran, Judge*, 6 C. C. A., 56 F. 2d 1019, and in the case of *C. & O. R. Co.* v. *Vigor, Admr.*, 90 F. 2d 7 (c. d. 302 U. S. 705, 58 S. Ct. 26, 82 L. Ed. 545), and the case from the eighth circuit of *Schendel* v. *McGee, District Judge*, 300 Fed. 273, 278, held:

> "We are not concerned with the *justice* or the *wisdom* of such *legislation*. It being the law, it is the court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case" (citing three federal cases).

Therefore, we submit with all confidence that the *remedy*, if the *railroads feel that the burden is too great to abide by the language of the act of Congress*, is to appeal to the Congress *to repeal this venue statute* and not ask a court of equity to not follow the law, but to uproot, pare down, and destroy the law. The Minnesota state court reached the right conclusion in *Schendel* v. *D. C.*, 156 Minn. 380, 194 N. W. 780, when it held:

> "Under the doctrine of the second employers' liability cases, the state court must exercise its jurisdiction, if adequate to the occasion when a suitor comes to it. It is not a matter of its pleasure. It may not want his case. It may think the burden of trying it and the attendant expenses should be borne in another state; but there is a right in the suitor and a corresponding duty in the court, so the Supreme Court said."

The Supreme Court of Louisiana decided the question correctly when it held:

> "The Federal Employers' Liability Act expressly conferred upon the defendant in this suit the right to bring her action for damages or compensation in the court in which she brought it. * * * We cannot assume that the Congress of the United States, in allowing such an action to be brought in the district in which the defendant shall be doing business at the time of the commencement of such action, did not have in mind the inconvenience that would result in almost, if not quite, every case, from bringing the suit elsewhere than at the place where the cause of action arose."
>
> *Lancaster, Rec. R. R.*, v. *Mrs. Dunn, Admr.*, 153 La. 15, 95 So. 385.

This unanswereable interpretation of this act of Congress was cited, approved and followed by Judge Underwood in *C. & O. R. Co.* v. *Vigor, Admr.*, 17 Fed. Supp. 602, affirmed 90 F. 2d 7 (c. d. 302 U. S. 705).

The Supreme Court of Iowa in the case *Payne, Agent,* v. *Knapp,* 197 Iowa 737, 198 N. W. 62, overruling its former three opinions, on rehearing, 195 N. W. 1, and the case of *Spoor* v. *C., R. I. & P. Co.,* 191 Iowa 1134, 183 N. W. 580, and *Wabash R. Co.* v. *Peterson,* 187 Iowa 1331, 175 N. W. 533, said:

> "But in view of the *holding that the act of Congress confers a right that cannot be taken away by state legislation* upon a claimant to bring an action under the Federal Employers' Liability Act in any federal court designated by the act, and also gives concurrent jurisdiction to any state court of competent jurisdiction, it must follow *that the latter right is also one that the state cannot by legislation impair.* In other words, since the act confers concurrent jurisdiction of actions brought under it upon certain designated federal courts, and also upon certain state courts of competent jurisdiction, the right being given by federal statute, to resort to the latter must be as im-

mune from state prohibition as is the right to enter the former (see *Spokane & I. E. R. Co.* v. *Campbell*, 241 U. S. 497, 36 S. Ct. 683, 60 L. Ed. 1125)."

The same was held by the Supreme Court of Minnesota in the case of *Peterson* v. *Ry.*, 244 N. W. 823.

These state decisions are sound and unanswerable because they are based upon sound logical and fundamental law, because Congress covered the whole field of liability and venue jurisdiction by the Federal Employers' Liability Act, and this act of Congress governs whether the suit is brought in a state court or in a federal court, because the *right and the remedy comes from the same womb of creation*—Congress of the United States. It was expressly held in 1919, *Y. & M. R. R. Co.* v. *Mullins*, 249 U. S. 531, 63 L. Ed. 754; that the trial of these cases under the Federal Employers' Liability Act in state courts, that the trial court could now follow the "Mississippi *prima facie* Act." And in numerous other cases the Supreme Court so held.

Tennessee appellate courts' holdings in this Miles case are therefore unsound and do not conform to the fundamental law, and should be reversed.

5.

Liability and Remedy Were Created by the Original and Amended Act of Congress and That Remedy, and That Alone, Must Be Employed.

The act of Congress, 45 U. S. 56, provided that an injured employee engaged in interstate commerce, or in case of his death, his personal representative, could sue the carrier:

"In the district of the residence of the defendant."

The state courts and the federal courts in the *Hoffman Case, supra*, expressly held that the duty was man-

datory upon the state courts to entertain and maintain a suit under this federal act in the state courts, and this question has been adjudicated and settled beyond doubt in Missouri.

In 1933 in the case of *So. Pac. R. Co.* v. *Klinge*, 65 F. 2d 85, c. d. 290 U. S. 657, construing section six of the amendment said:

> "Section six offers plaintiff a choice of the districts
>
> (a) defendant's residence—in this case Kentucky.
>
> (b) Where the cause of action arose—in this cause, Oregon.
>
> (c) Where the defendant is doing business at the time of commencing of the action—in this case, Utah, where the defendant was doing business as he had a right to do."

Therefore under the above-quoted language of the act that suit might be brought:

"In the district of the residence of the defendant," suit could have been maintained by Mrs. Miles or her representative in the federal or state courts of East St. Louis, Illinois.

This being settled in the Hoffman case and in the *Klinge case, supra*, it is not open to argument further. And if it would not be inequitable to prosecute the suit at East St. Louis, Illinois, under what logic, reason or proposition or law or equity would it be inequitable to prosecute the suit a mile or two west of there, across the Mississippi River, where the defendant was operating fourteen or fifteen trains a day, and had an army of employees, and a cantonment of offices, and was doing a remunerative business of $1,488,710.74 per year? (R. 109.)

As early as Chief Justice Marshall's opinion in *Gibbons* v. *Ogden*, 9 Wheat. 1, 6 L. Ed. 23, it was announced, and has ever since been followed, as the law, and especially in *Savage* v. *Jones*, 225 U. S. 501, 533, 56 L. Ed. 1182, 1195, as follows:

> "When the question is whether a federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed.
>
> "If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulations of Congress within its sphere of its delegated power."

Sixty-seven years ago in *Pollard* v. *Bailey*, 87 U. S. 527, 22 L. Ed. 376, 378, Chief Justice Waite, interpreting liability and venue statute, said:

> "Liability and remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common law action. But where the provision for the liability *is coupled with a provision for special remedy*, that remedy, and that alone must be employed."

In the *Kepner Case*, 62 S. Ct. 10, the court, through Mr. Justice Reed, said:

> "A privilege of venue granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense."

Three times before this announcement, twice in cases involving the Federal Employers' Liability Act, and once in a case not employing the Federal Employers' Liability Act, the Supreme Court held:

> "As a practical matter, courts could not undertake to ascertain in advance of trial the number and

importance of probable witnesses within and without the state and retain or refuse jurisdiction according to the relative inconvenience of the parties. *Denver & R. G. W. R. Co.* v. *Terte, supra*, 284 U. S. 287, 76 L. Ed. 297, 52 S. Ct. 485; *Hoffman* v. *Mo.*, 274 U. S. 21, 71 L. Ed. 907; 78 L. Ed. 1402, 292 U. S. 511."

National Milling Co. v. *Columbia Milling Co.*, 292 U. S. 511, 54 S. Ct. 797, 78 L. Ed. 1396.

In the *National Milling Co. Case, supra*, the court further answered in the scholarly and terse language of Mr. Justice Cardozo:

"Such a suit *may be a burden*, but *oppressive* and *unreasonable, it is not.*"

6.

It Would Not Only Frustrate the Intention and Purposes of the Act of Congress to Permit an Injunction in This Miles Case to Stand, But Would Take from Mrs. Miles a Privilege That Congress Has Granted Her and Give It to the Railroad, to Whom the Privilege Was Not Granted But Against Whom the Privilege Was Granted to Mrs. Miles.

Judge Underwood decided this question and said that it would be,

"Taking a privilege from one upon whom it is conferred by statute, and giving it to the opposite party against whom that specific privilege was granted."

C. & O. v. Vigor, 17 Fed. Supp. 602, aff. 90 F. 2d 7, c. d. 302 U. S. 705:

The Supreme Court of the United States, in two decisions, has recognized and held:

"The grant of concurrent jurisdiction implies that in the first instance *the plaintiff shall have the choice of the court.* As an incident, he is entitled to whatever *remedial advantage inheres* in that *particular*

forum. M. & St. L. R. Co. v. *Bombolis*, 241 U. S. 211; 60 L. Ed. 961."

Mo. ex rel. R. R. Co. v. *Taylor*, 266 U. S. 200, 45 S. Ct. 47, 69 L. Ed. 247, 42 A. L. R. 1232.

The Sixth Circuit, in *Teel, Admr.*, v. *C. & O. R. Co.*, 204 Fed. 917, 47 L. R. A. (N. S.) 223, interpreting this act of Congress said:

> "The manifest purpose was to yield to the suitors under it the choice of tribunal as between the courts of the United States and the several states."

The statute laws of Missouri, of which this court will take judicial knowledge, provides that jury verdicts may be rendered by nine jurors instead of twelve. Tennessee statutes, of which this court will take judicial knowledge, as well as the federal law in Tennessee and throughout the country, requires twelve jurors to render a verdict. Therefore, under the language of the Supreme Court this remedial advantage in the Missouri forum is a right created by Congressional act, and the interpretation of same which gives this right to Mrs. Miles, and the Tennessee appellate courts took these rights away from her and Santa Claused them to the railroad company.

7.

Under the Amendment of April 4, 1910 (45 U. S. C. A. 56), and under the Further Amendment of June 4, 1941, the Act of Congress That Creates the Right and Remedy Provides a Three-Year Statutory Limitation.

It was been expressly held by the federal courts construing this limitation act that it is not merely a limitation period created by this act—it is not a mere statute of limitations, but a *condition of the right of action.*

Bell v. *Wabash R. Co.*, (8 C. C. A.) 50 F. 2d 569.

Wabash v. *Bridal*, 94 F. 2d 117, c. d. 305 U. S. 602, 83 L. Ed. 582, 59 S. Ct. 602.

Therefore, if the Tennessee appellate court's injunction in this case is to be sustained then indeed a most inequitable result that can be imagined exists because Mrs. Miles's cause is completely destroyed, because this "condition may not be waived" and it is a "condition" that evidently would be enforced and *Mrs. Miles's right of recovery entirely destroyed in a new suit.*

Conclusion.

The carriers, represented by the ablest of legal talent in the United States, have been dissatisfied with this act of Congress for thirty-one years. They have appealed to the federal courts, whose duty it has been to interpret and construe this act of Congress. Fourteen decisions have been rendered by the federal courts construing this venue jurisdictional amendment of 1910. No efforts seem to have been made by the carriers to seek relief in the halls of Congress where this act was created. But the carriers have succeeded in some state courts which have evidently, erroneously *applied legislative relief* and called it *judicial relief*. Many of the courts have said that the remedy, if the carriers thought the act of Congress unjust, was to apply for *legislative relief* and not judicial. It is hoped that this highest judicial tribunal in this nation will settle this question and so mark the highway of travel that there will be no further long and prolonged litigation to prevent the employee or his widow from the relief created by the womb of Congress, whether the suit is instituted in the federal or in state court. This prolonged litigation for thirty-one years reminds us of the most noted case in the law book of *Gaines* v. *Henning*, 65 U. S. 631, in which the court said:

> "Thus, after a litigation of thirty years has this court adjudicated the principles applicable to her rights in her father's estate. They are now finally settled. When, hereafter, some distinguished American lawyer shall retire from his practice to write the

history of his country's jurisprudence, this case will be registered by him as the most remarkable in the records of its courts."

With the fullest measure of confidence in the end that will be reached by this highest tribunal of our great nation, we most confidently submit this brief and the rights of the client.

Respectfully submitted,

WILLIAM G. CAVETT,
Solicitor for Mrs. Miles.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

MRS. JESSE MILES, ET AL.,
Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent.

NO. 272

REPLY BRIEF ON BEHALF OF RESPONDENT.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

MRS. JESSE MILES, ET AL.,
Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent.

NO. 272

REPLY BRIEF ON BEHALF OF RESPONDENT.

The sole question presented on this petition for certiorari is whether the Act of Congress, 45 USCA, Sec. 56, fixing venue for the Federal Courts for the enforcement of the Federal Employers' Liability Act, takes away the universally recognized equity jurisdiction of State Courts to enjoin the prosecution of suits brought in *State* Courts where the prosecution thereof is oppressive, inequitable or fraudulent.

The administrator of the estate of Paul H. Miles, deceased, brought a suit against Illinois Central Railroad Company in the *State* Court of Missouri under the Federal Employers' Liability Act to recover damages for

the wrongful death of the deceased. The Illinois Central Railroad Company filed its bill in the State Court of equity in Memphis, Tennessee, to enjoin Mrs. Miles and her two daughters, the beneficiaries in the suit brought in the State Court of Missouri, from aiding or participating in the prosecution of that suit upon the ground that the prosecution thereof was inequitable, oppressive and unconscionable.

The Appellate Courts of Tennessee held that Illinois Central Railroad Company was entitled to the injunction, and it is this holding which petitioners herein complain of in the petition for certiorari.

Leaving out of consideration the Act of Congress, petitioners do not contend that the Chancery Court of Tennessee is without jurisdiction to grant the injunction, nor do petitioners claim that the facts of this case do not justify the injunction. Petitioners' sole contention is that the Act of Congress takes away from the State Court the equity jurisdiction to enjoin one of its citizens from prosecuting a suit brought in a *State* Court under the Federal Employers' Liability Act where the prosecution thereof is inequitable, oppressive or fraudulent. The Act relied on as having this effect is 45 USCA, Sec. 56, and is as follows:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the Courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case

arising under this chapter and brought in any State Court of competent jurisdiction shall be removed to any Court of the United States."

At the trial of the cause in the Chancery Court, the Court found (1) that at the time of the filing of the original bill the Illinois Central Railroad Company was doing business in the State of Missouri, and (2) that the prosecution of the case in the State Court of St. Louis will be oppressive and inequitable. (*R.* p. 118.) In the Appellate Courts of Tennessee those two findings of fact were never questioned, but were conceded, as will be shown more particularly hereinafter. It is also admitted that petitioners are residents of Memphis, Shelby County, Tennessee. The administrator is a resident of Missouri.

The ground upon which the jurisdiction of this Court is sought is that the aforementioned injunction deprived petitioners of a right, privilege or immunity granted to them by the aforementioned Act of Congress.

On the other hand, respondent contends that (1) since the suit as to which the injunction related was instituted in a *State* Court, the Act of Congress has no application; (2) if it does have application, the effect is not to take away from a Court of equity its well recognized jurisdiction to enjoin the prosecution of a suit brought under the Federal Employers' Liability Act on the equitable ground here involved; and (3) the venue provisions of the Federal Employers Liability Act cannot affect the jurisdiction of the state court nor deprive the state court of its equitable powers to restrain a citizen of the State from doing an act, otherwise legal, which it finds in the circumstances and under the law of the State is inequitable.

HOLDING OF THE APPELLATE COURTS OF TENNESSEE.

The opinion of the Court of Appeals of Tennessee is found in the record beginning at p. 120. That Court held:

(1) The Chancellor held that the conduct of petitioners in the prosecution of the suit in the State Court of Missouri was oppressive, inequitable and unconscionable, and that since there was no appeal taken from such holding, that question was no longer open, but is adjudicated and determined.

(2) Regardless of the Act of Congress, the State Courts of Tennessee have the jurisdiction to enjoin one of its citizens from prosecuting a suit in the *State* Court of another state upon the equitable ground here involved.

(3) The Act of Congress did not affect the jurisdiction of the State Court to grant such relief, since Congress does not possess the power to regulate either the venue or jurisdiction of State Courts.

(4) But, even if the Congress does have such power (which it does not), this Act did not have the effect of taking away the well recognized power of equity Courts to enjoin its citizens from the prosecution of a suit brought under the Federal Employers' Liability Act at a place permitted by the Act if the prosecution thereof was under the law of the State found to be inequitable, oppressive and fraudulent.

The Supreme Court in its opinion (*Record*, p. 414) affirmed and, in effect, adopted as its own the opinion of the Court of Appeals.

COURTS OF EQUITY MAY ENJOIN SUITS INSTITUTED IN STATE COURTS AS DISTINGUISHED FROM FEDERAL COURTS.

The Supreme Court held in *Illinois Central Railroad Co. vs. Miles, et al.*, 174 Tenn. 676, when this case was before that Court on demurrer, that the facts alleged in the bill justified the injunction. In that case the Court said:

> "With section 56, 45 USCA, out of the way, a suit like the one here sought to be enjoined in a foreign jurisdiction is oppressive, a burden on commerce, and justifies relief by injunction. When, however, section 56 is interposed and we are asked to relieve a carrier of a burden sanctioned by Congress, the question requires more consideration. This question is reserved."
>
> (Op. p. 687.)

The Chancellor, at the hearing on the merits after remand, held that the prosecution of the case in the State Court in St. Louis was oppressive and inequitable, and the Court of Appeals, since no appeal was taken from such holding, held that that question was no longer an open one, saying:

> "In the circumstances stated, we are bound to and do accept as correct the conclusion reached by the Chancellor with respect to the oppressive and inequitable effect of the prosecution of the suit sought to be enjoined."

It results that * is an adjudicated fact not now open to challenge that the prosecution of the suit in the State Court of Missouri is inequitable and oppressive, and further that the facts of this case warrant the injunction under the holdings of the Tennessee Supreme Court.

Petitioners, therefore, since they did not raise in the State Court the question that the facts of this case were not sufficient to justify the injunction, cannot, of course, raise that question for the first time in this Court. Indeed, they do not attempt to do so.

That the Courts of equity of Tennessee have the jurisdiction to enjoin the prosecution of a suit on the ground that its prosecution is inequitable and oppressive is settled.

Illinois Central Railroad Co. vs. Miles, et al., 174 Tenn. 676;
Railroad Co. vs. Ragan, (1938), 172 Tenn. 593;
American Express Co. vs. Fox, (1916), 135 Tenn. 489.

The above holding of the Tennessee Supreme Court as to the jurisdiction of the State Equity Court is binding on this Court. As was said in *Manning vs. Ketcham*, 58 Fed. (2d), 948:

> "In determining the extent of the jurisdiction of its own courts, we will of course follow the decisions of the Court of Appeals of Kentucky. Forsyth v. Hammond, 166 U. S. 506, 518, 17 S. Ct. 665, 41 L. Ed. 1095; Freeport Water Co. v. Freeport City, 180 U. S. 587, 595, 21 S. Ct. 493, 45 L. Ed. 679; Collins v. Johnston, 237 U. S. 502, 508, 35 S. Ct. 649, 59 L. Ed. 1071; Huston v. Big Ben Land Co., 1 F. (2d) 93, 94, C. C. A. 9; Barnett v. Kunkel, 259 F. 394, 400 C. C. A. 8."
>
> (P. 949.)

We have a case then where the unchallenged facts warrant the injunction and the State Court has the jurisdiction to grant the injunction unless it has been deprived of that jurisdiction by the Act of Congress.

This Act purports to fix the venue for the Federal Courts; it does not purport to fix the venue for State Courts. After fixing the venue for Federal Courts in the three designated places, the Act merely provides that "the jurisdiction of the Courts of the United States under this chapter shall be concurrent with that of the Courts of the several states." The effect of this language is not "to enlarge or regulate the jurisdiction of the State Court" (*Mondou vs. New York, N. H. & H. R. Co.*, 223 U. S. 1); and "that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so." (*Douglas vs. Railroad*, 279 U. S. 387.) It does not purport to nor can it create, prescribe, limit, or affect the equitable jurisdiction of the Tennessee Courts. That jurisdiction can only be created, prescribed and limited by the constitution and statutes of the State. That is the effect of the holdings in Mondou and Douglas cases just referred to. That is the holding of all the cases as will appear from the cases hereinafter cited.

Since with the Act of Congress out of the way, the Courts of Equity of Tennessee have this jurisdiction and the unchallenged facts of this record justify its exercise and since the Act of Congress cannot affect the jurisdiction of a State Court, we submit that the State Court continues to possess the jurisdiction. It results that petitioners have not been deprived of any right, privilege or immunity.

Ex Parte Crandall, 52 Fed (2d) 650 is directly in point. There the District Court was discussing the power of a State Court to enjoin the prosecution of a suit brought in a *State* Court under the Federal Employers' Liability Act.

The Court said:

> "Accepting as I must the construction of the act placed on it in the Douglas Case, it is apparent that there is a difference, so far as claimant's right to select her forum is concerned, between the jurisdiction of the federal court and the jurisdiction of the state court. 'There is nothing in the Act of Congress that purports to force a duty upon such Courts as against an otherwise valid excuse.' Congress could not, and did not, enlarge the jurisdiction of the state courts. The jurisdiction of the state court is defined by the state which creates it. The most that Congress could do was to permit a state court to enforce the cause of action created by the federal act. Not being permitted to create a jurisdiction of the state court, it is needless to add that Congress did not and could not, restrict the jurisdiction of a state court."

Further said the Court:

> "When the act was passed, state courts of general jurisdiction entertained suits to efforce liability arising out of the negligent operation of railroads engaged in interstate, as well as intrastate, commerce. The litigants in those courts, however, were subject to the control of courts of equity having jurisdiction of the person. It follows, therefore, that Congress, not having created nor restricted the jurisdiction of the state court over causes of action such as the one here under consideration, did not, and could not, deal with the power of one state court to enjoin, upon a proper showing, actions brought by and against citizens within its jurisdiction in the state courts of a sister state. Such are the holdings

of Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N. W. 218; Walton v. Pryor, 276 Ill. 563, 115 N. E. 2, L. R. A. 1918E, 914; Reed's Adm'x. v. I. C. R. R. Co., 182 Ky. 455, 206 S. W. 798; Cleveland, C., C. & St. L. Ry. Co. v. Shelly (Ind. App.) 170 N. E. 328."

When this case reached the Circuit Court of Appeals for the Seventh Circuit, that Court said:

> "The general right of Indiana citizens to begin actions of this nature, wherever service of process on the defendant could be had, was always potentially qualified by the jurisdiction of equity to restrain the citizen from commencing the action in a foreign jurisdiction where to do so would unreasonably, inequitably, and unfairly harass, oppress, or defraud the defendant.
>
> The Federal Employers' Liability Act does not assume to remove this qualification, and in our judgment does not exempt the citizen from invocation against him of this equitable jurisdiction under facts which would in general justify its application." *Ex Parte Crandall*, 53 Fed. (2d) 969.

The identical question presented on this petition for certiorari was decided by the Supreme Court of Indiana in *McConnell vs. Thomson*, 213 Ind. 16 in these words:

> "Congress cannot create and define jurisdiction of state courts, but can authorize state courts to enforce a cause of action created by a federal act. Congress cannot confer upon a citizen of Indiana a federal right to prosecute a cause of action arising in Indiana under a federal act in a state court of Missouri; nor can Congress compel a Missouri state court to accept jurisdiction of a suit to enforce such a cause of action. Consequently when an Indiana state court enjoins a litigant within its jurisdiction from

prosecuting a suit in a court of another state it is not restraining the litigant from the exercise of a federal right nor interfering with the exercise of a duty which is enjoined by federal law upon the foreign court."

Roberts Federal Liability of Carriers, Vol. 2, p. 1856, Sec. 962, lays down the rule as follows:

"It seems clear that no federal right is denied by a decision of a state court granting an injunction restraining parties subject to its jurisdiction, from prosecuting in the courts of another state an action under the Federal Employers' Liability Act upon the ground that the prosecution of such action would work an unconscionable hardship upon the defendant. The right of a party, resident or nonresident, to institute an action under the liability act in a state court springs, not from the liability act, or any other federal statutory or constitutional provision, but from the constitutional and statutory provisions of the state which establishes the court and defines its powers. Hence where a state court, exercising its inherent authority to prevent persons within its equitable jurisdiction from employing the process of another court as an instrument of fraud, oppression, etc., enjoins such a person from instituting or maintaining a suit under the liability act in the courts of another state, neither that determination, nor a judgment of the highest court of that state affirming the same, is subject to review in the national Supreme Court upon the ground that a federal right has been denied, although the action which is thus excluded from a court of competent jurisdiction is one based upon a federal statute."

In the note the author quotes the following from Reed's *Admrx. vs. Illinois Central Railroad Company*, 182 Ky., 455:

> 35. "The federal act does not, as we think, take away from the courts the power they possessed before its enactment to restrain the plaintiff in a transitory suit from doing an inequitable and unconscionable thing that would subject the defendant to great and unnecessary cost and inconvenience. Before the passage of this act, the plaintiff had exactly the same legal right to institute her action in any court having jurisdiction, in which the railroad company could have brought before the court, as she does now to bring it in the three places specified in the act. It therefore seems to us that, if it was allowable in a proper case before the act to enjoin the plaintiff from bringing a suit in a court and at a place where under the law she had the right to bring it, it must be equally allowable to do so since the act, because the act merely limits instead of enlarging the places where suit must be brought, and it confers no more right to bring the suit in the place named in the act than the general law before the act (which) conferred the right to bring the suit at any place where the defendant could be brought before a court having jurisdiction."

We feel that to quote from other cases so holding will unduly lengthen this brief, but all the following cases discuss pointedly whether this Act of Congress deprives Courts of equity of this equitable jurisdiction to enjoin suits instituted in *State* Courts to enforce the Federal Employers' Liability Act, and each of them holds that the Act does not have that effect.

Reed's Admrx. vs. Illinois Central Railroad Company, 182 Ky., 455;

State of Missouri, ex rel vs. Nortoni, 331 Mo. 764;

Railway Company vs. McGinley, 175 Wis. 565;
Railroad Company vs. Ball, 126 Kan. 745;
Kern vs. Railway Company, 204 Ind. 595;
Railway Company vs. Shelby, 96 Ind. App., 273;
Alspaugh vs. Railroad Company, 98 Ind. App., 280;
Alford vs. Railroad Company, 299 Mo. App. 102;
McConnell vs. Thomson, 102 Ind. App., 518;
Railroad Co. vs. Matzinger, 136 Ohio, 271.

Indeed, our investigation discloses no case holding that this Act of Congress takes away the jurisdiction of a Court of equity to enjoin the prosecution of a suit in a *State* Court. The opinion of the Court of Appeals (R. p. 120) discusses the cases relied on by petitioners and demonstrates that none of them so hold. We do not believe there is such a case. In some of the cases the Court denies the injunction on the ground that the evidence does not warrant the Court in exercising the jurisdiction; but all such cases recognize the jurisdiction of the Court to do so in a proper case.

In this class of cases fall the three cases referred to by the Supreme Court of Tennessee in *Illinois Central Railroad Company vs. Miles, et al.*, 174 Tenn. 676 as holding that the Act of Congress did affect the jurisdiction of State Courts to enjoin the prosecution of cases brought in the State Court. These cases were: *Southern Pacific Company vs. Baum*, 39 New Mexico, 22; 38 Pac. (2d), 1106; *Lancaster vs. Dunn*, 153 La., 15; 96 So., 385; *Chesapeake & Ohio Railroad Co. vs. Vigor*, 90 Fed. (2d), 7. In each of these cases the injunction was denied, but for the reason the evidence did not justify the application of this equitable doctrine. Each of them recognized its existence and that in a proper case

the Court possessed the jurisdiction unaffected by the Act of Congress. In *Southern Pacific Company vs. Baum, supra*, the Court, after first noting that the Act did not grant "an absolute right" to institute suit at any place where the defendant was doing business, said in recognition of this equitable jurisdiction:

> "We do not mean to say that a showing of inconvenience and expense may not be made strong enough to warrant such relief as the appellant seeks."

In *Lancaster vs. Dunn, supra*, the Court again denied the injunction because the evidence did not warrant it, but recognized the jurisdiction of the Court to grant it in a proper case, saying:

> "The doctrine seems to be well established now by the decisions of the courts of other states that a court of equity has authority to prevent a person within the court's jurisdiction from prosecuting a suit in a court having jurisdiction in another state, whenever the purpose or object of the suit complained of is merely to harass and annoy the defendant therein, or to accomplish something unconscionable or inequitable, or not obtainable in the court of the complaint. There is no well-defined rule or formula for determining when such a case is presented to a court of equity. Each case must be determined by its own peculiar facts. The doctrine of the authority is founded upon the theory that every citizen owes obedience to the laws of the state of his domicile and to the decrees of the courts of his domicile."

And in *Chesapeake & Ohio Railroad Co. vs. Vigor, supra*, the Court recognized that the Courts of equity

still possessed this jurisdiction notwithstanding the Act of Congress, but held the facts of that case did not justify its exercise, saying:

> "We find no fact alleged in the bill or set forth in the supporting affidavit that would justify us in saying that the trial of the cause in the Indiana Court would cause an unreasonable burden on the plaintiff or give to the defendant an inequitable advantage."

And, too, there are cases denying the injunction when it is sought on the ground that the prosecution of the suit is a burden on interstate commerce. That, of course, is because Congress has the right to regulate commerce and has the right to burden it if it elects to do so. The injunction in this case is not sought on that ground, and those cases are not, therefore, controlling.

Petitioners cannot urge on this petition any question not raised in the appellate courts of Tennessee. They did not raise in the Tennessee courts the question that the equity state courts did not have jurisdiction in a proper case to enjoin the prosecution of a suit on the equitable grounds here involved; they did not raise in the Tennessee courts the question that the facts of this case do not justify the exercise of that jurisdiction. Petitioners, evidently realizing that they cannot do so, do not attempt to raise those questions in this court in the petition or in the argument in support thereof. The only question they raise is that the Act of Congress here involved takes away from the State Court a jurisdiction which admittedly the State Court otherwise has.

For the reason hereinbefore set out, we submit the Act does not take from the State Courts this jurisdiction.

EQUITY STATE COURTS MAY ENJOIN EVEN SUITS INSTITUTED IN FEDERAL COURTS AS DISTINGUISHED FROM STATE COURTS.

So far, we have dealt only with the effect of this Act of Congress on the jurisdiction of a State Court to enjoin the prosecution of a case in a *State* Court when brought under the Federal Employers' Liability Act, and have attempted to show that this Act of Congress does not affect that jurisdiction in any way whatsoever.

But if it be assumed that Congress did have the power in suits brought under the Federal Employers' Liability Act to regulate the jurisdiction and venue of State Courts, then we submit that this Act does not have that effect for the following reasons:

(1) The Act provides that the suit may be brought in the Federal Court in the district "in which the defendant shall be doing business at the time of the commencement of such action." In thus fixing the venue, it is not necessary to incorporate in the Act the exceptions and limitations thereto in order for them to apply. We know of no act either of Congress or of the legislature of any state fixing venue which contains the limitations and exceptions to such venue. For example, when Tennessee recently passed the Workmen's Compensation Act fixing the venue therefor in the Circuit Court of the county where the defendant may be found, it was not necessary in order for the limitations to apply to include there a provision substantially as follows:

> "Provided, however, the Circuit Court of said county shall not have jurisdiction (1) if the de-

fendant is present in the county attending as a witness the trial of a suit; (2) if the suit is instituted in the county before the defendant comes into the county though served with process thereafter; (3) if the defendant's coming into the county is induced by the fraud of the plaintiff in order to get service; (4) if he comes in the county in obedience to a writ issued by a court of competent jurisdiction; (5) if plaintiff and defendant live in the same county; (6) if the jurisdiction is acquired by attachment; (7) defendant must 'come to rest' and not merely be passing through the county as on a railroad train; and provided further, the Court of the county shall have jurisdiction; (8) if the defendant has an office or agency in the county; (9) if suit is brought in the county of the residence of one of the defendants."

(2) The venue provision should not be so construed as to hold that Congress placed its stamp of approval on oppressive, unconscionable and fraudulent conduct, taking such conduct out of the realm of prohibited acts and placing it on an equality with equitable conduct. Before we should attribute to Congress an intention to work so radical and drastic a change in one of the basic and inherent powers of a Court of equity, we should be able to find warrant for so doing in language that leaves no reasonable doubt about the matter.

(3) We must assume that Congress was aware of this fundamental and long established jurisdiction of the Court of equity, and if it had intended to impair or destroy that power, being aware of the drastic nature of such action, it would have expressed itself in terms of utmost clarity. The importance of the matter demanded that it be not left to implication.

(4) Prior to the enactment of this Act of Congress, the venue for suits against a corporation was at any place where the defendant should be doing business. This Act, therefore, is merely declaratory of the law as it existed at the time of its enactment. Prior to the enactment this right had the limitation that the suit could not be there prosecuted if to do so was inequitable and fraudulent. By passing this Act declaratory of the law as it then existed, it should not be construed to take away this limitation and bestow the right to pursue the remedy in an oppressive and unreasonable manner.

The cases construing and applying the Act in accordance with the above principles are as follows.

Bryant vs. Atlantic Coastline Railroad Co., 92 Fed. (2d) 569;
Railway Co. vs. Vigor, 90 Fed, (2d) 7;
Rader vs. Baltimore & O. R.R. Co., 108 Fed. (2d) 980;
Railroad Company vs. Schendel, 292 Fed. 326;
Railroad Company vs. Bole, 31 Fed. Sup. 221.
Southern Railway Co. vs. Cochran, 56 Fed. (2d) 1019.

So we submit that if this Act of Congress is applicable, nevertheless this Act of Congress does not take away this equitable jurisdiction of a State Court of equity.

CONCLUSION.

The only question presented to the Court by the petition is whether the Federal Employers' Liability Act deprives the states of control over their citizens when, under color of law, an inequitable, unconscionable or fraudulent act is about to be committed. It has been adjudicated as a fact by the several courts through which this case has passed that it would be inequitable and oppressive for petitioners who are citizens of Tennessee to impose upon respondent the burden of defending the case in Missouri. We can not believe that the optional venue provision of the Federal Employers' Liability Act has so emasculated the sovereign states that they can not forbid their citizens from the commission of unconscionable, inequitable and oppressive acts. The Court should bear in mind that nothing in the injunction in this case prohibits the prosecution of the suit in Missouri nor has the Supreme Court nor the inferior courts of the State of Tennessee sought to project their views into the proceedings of another sister sovereign state. The only question that has been determined by the inferior courts and the Supreme Court of Tennessee is that they have adjudicated as a fact that it would be unconscionable for the petitioners to participate in subjecting the respondent to defending this suit in Missouri. It has never been doubted that a Court of Chancery has the power to enter an order in personam against anyone in its jurisdiction restraining any act that has been adjudicated to be inequitable, unconscionable or oppressive. Since the petitioners do not allege that they were deprived of due process of law by any incident of the trial in which it was factually determined that it would be inequitable and oppressive for them to participate in the suit in a

foreign state we submit that petitioner has not been deprived of any right, privilege or immunity nor have they brought any justifiable claim for relief before the Court.

It should be kept in mind that petitioners herein, enjoined by the Tennessee Court from doing an act which the court has found, under the law of the State, to be inequitable as a matter of fact, are residents and citizens of the State of Tennessee. Their conduct while they remain residents and citizens of the State is subject to the equitable control of the courts of that State. The injunction in no way attempts to control the proceedings in the Missouri court. It is directed solely to the acts of respondents while they are within the Tennessee equitable jurisdiction.

We respectfully submit the petition should be denied.

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The sole question presented on this petition for certiorari is whether the Act of Congress, 45 USCA, Sec. 56, fixing venue of Federal Courts for the enforcement of the Federal Employers' Liability Act, takes away the universally recognized equity jurisdiction of state courts to enjoin the prosecution of *suits brought in state courts* of sister states where the prosecution thereof is oppressive, inequitable or fraudulent.

The administrator of the estate of Paul H. Miles, deceased, brought a suit against the Illinois Central Railroad Company in a state court of Missouri under the

Federal Employers' Liability Act to recover damages for the alleged wrongful death of the deceased, resulting from injuries received in the railroad yards at Memphis, Tennessee. The administrator is a resident of Missouri. Miles was a resident of Tennessee at the time of his death and his widow and daughters were residents of Tennessee at the time the injunction was sought, and have been continuously since. The Illinois Central Railroad Company filed its bill in the state court of equity in Memphis, Tennessee, to enjoin Mrs. Miles and her two daughters, the beneficiaries in the suit brought in the state court of Missouri, from aiding or participating in the prosecution of that suit upon the ground that the prosecution thereof was inequitable, oppressive or fraudulent.

The appellate courts of Tennessee held that the Illinois Central Railroad Company was entitled to the injunction, and granted it; and it is this holding which petitioners herein complain of in the petition for certiorari.

Leaving out of consideration the Act of Congress, petitioners did not contend that the State Court of Equity is without jurisdiction to grant the injunction, nor did petitioners claim that the facts of this case did not justify the injunction. Petitioners' sole contention is that the Act of Congress takes away from the state court of Tennessee equity jurisdiction to enjoin one of its citizens from prosecuting a suit brought in another state court under the Federal Employers' Liability Act though the prosecution thereof is inequitable, oppressive or fraudulent. The Act relied on as having this effect is 45 USCA, Sec. 56 and is as follows:

> "Under this chapter an action may be brought in a district court of the United States, in the district

of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the Courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State Court of competent jurisdiction shall be removed to any Court of the United States."

At the trial of the cause in the Tennessee Chancery Court, that court found (1) that at the time of the filing of the original bill the Illinois Central Railroad Company was doing business in the State of Missouri, and (2) that the prosecution of the case in the state court of Missouri at St. Louis would be oppressive, inequitable and fraudulent. (R. p. 118.) In the appellate courts of Tennessee those two findings of fact were never questioned, but were conceded, as will be shown more particularly hereinafter. It is also admitted that petitioners are residents of Memphis, Shelby County, Tennessee. The administrator is a resident of Missouri.

The jurisdiction of this court is sought upon the ground that the aforementioned injunction deprived petitioners of a right, privilege or immunity granted to them by the aforementioned Act of Congress. (Petition for Certiorari, p. 6.)

On the other hand, respondent contends that (1) the suit as to which the injunction related was instituted in a state court, and Congress is without power to confer venue or jurisdiction on state courts; (2) if Congress does possess that power the language of the Federal Employers' Liability Act clearly shows that Congress

did not attempt to exercise such power in that act; and (3) the venue provisions of the Federal Employers' Liability Act do not and cannot affect the jurisdiction of a state court nor deprive a state court of its equitable powers to restrain a citizen of the state from doing an act otherwise legal which it finds in the circumstances and under the law of the state to be inequitable and fraudulent.

HOLDING OF THE APPELLATE COURTS OF TENNESSEE.

The opinion of the Court of Appeals of Tennessee is found in the record beginning at page 120. That court held:

(1) The Chancellor held that the conduct of petitioners in the prosecution of the suit in the state court of Missouri was oppressive, inequitable and unconscionable, and that since there was no appeal taken from such holding, that question was no longer open, but is adjudicated and determined.

(2) Notwithstanding the Act of Congress, the state courts of Tennessee have jurisdiction to enjoin one of its citizens from prosecuting a suit in the state court of another state upon the equitable ground here involved.

(3) The Act of Congress did not affect the jurisdiction of the state court to grant such relief, since Congress does not possess the power to regulate either the venue or jurisdiction of state courts.

(4) But even if the Congress does have such power (which we submit it does not), the language employed in the act clearly shows that Congress did not attempt to exercise that power in this particular act.

The Supreme Court in its opinion (R. p. 414) affirmed and, in effect, adopted as its own the opinion of the Court of Appeals.

FACTS OF THIS CASE.

Though not questioned in the petition for certiorari nor subject to review or supervision in this court, we deem it helpful here briefly to state the undisputed facts of the case presented.

Petitioners were enjoined by the courts of Tennessee from aiding or participating in the prosecution of the case of R. R. Adams, Administrator, vs. Illinois Central Railroad Company, instituted in the state court of Missouri at St. Louis. The petition or bill of complaint filed in that cause did not allege any particular acts of negligence. As permitted by the Missouri law, it contained only the averment that the death of the deceased was the "direct and proximate result of the negligence and carelessness of the defendant" (R. p. 64).

To meet this broad allegation it would have been necessary to have present at the trial witnesses to prove the non-existence of whatever acts of negligence plaintiff and his witnesses might testify to. Witness Munson (R. p. 67), sets forth 14 grounds of negligence, contributory negligence and assumption of risk which could arise in the trial of the case, and to meet or prove which it

would be necessary for this respondent to have the proper witnesses present at the trial. It was shown that in addition to the two train crews, consisting of five men each, it would be necessary to have present, to refute whatever acts of negligence plaintiff might elect to prove at the trial, the yardmaster in charge of the yard in which plaintiff was working at the time of the injury, the general yardmaster, the trainmaster, the superintendent of terminals, the master mechanic, the general car foreman and the assistant general car foreman (R. pp. 69, 70). The witness further testified that he had interviewed each of the foregoing officials and that their testimony was material to the proper defense of the suit (R. p. 70). The duties of each of those officials are set forth by the witness. (R. p. 70, et seq.)

The witness further testified that the trial of this case would take a minimum of four days (R. p. 74), and the aforementioned witnesses would be required to remain away from their duties for such additional days as was necessary for the case to be reached in the event it was not begun on the day it was set for trial.

The witness J. B. Hamilton, superintendent of respondent's St. Louis division, testified that for the aforementioned executive officers of the respondent to be taken away from their duties for four days or longer would make it impossible for respondent to operate the railroad. This witness said with reference to the effect on respondent of taking away these executive officials:

> "A. From my experience, thirty-two years, same as Fred Munson, I would say that if they were gone one day, that personnel you mentioned, would be about like taking all the fire apparatus away from

a fire house in case a fire broke out. I don't know just what would happen; it would be a serious thing.

"Q. It is your view that for the men occupying these positions I have named to be taken away even for one day would be a very—have a very serious effect on the operation of the railroad?

"A. Potentially, yes sir, it would be risky, risking a great deal. It would be assuming that things wouldn't happen that are liable to happen any day.

"Q. Mr. Hamilton, if the men occupying the positions I have named were to leave, tell us whether or not there would be anybody left with any authority of a general nature. (fol. 132). In other words, would there be an executive officer left with those men gone?

"A. No, you would have your chief clerk, secretary and down the line in that fashion as far as possible, but nobody with any executive authority or sufficient authority with ability to act in an emergency that might arise. That is what they are there for.

"Q. Is it your idea that if they didn't have responsible positions they wouldn't be drawing a salary, occupying responsible places?

"A. That is right.

"Q. Well, now, Mr. Hamilton, tell us whether or not it would be possible to run a railroad without those officials.

"A. It would not."

(R. pp. 85, 86.)

The above facts are not in dispute. Petitioners introduced no evidence whatsoever in regard thereto.

It results, therefore, that this case presents one not only of inconvenience and expense but, in addition, it presents one where to permit the suit to be prosecuted in St. Louis would impose on the respondent a very

serious hardship that might result in disaster, if, indeed, it would not completely stop the operation of the Memphis terminal during the time these witnesses were attending court in St. Louis.

It was on these facts that the Chancellor found that the prosecution of the case in St. Louis would be oppressive, inequitable and fraudulent, and this finding was approved by the appellate courts of Tennessee. It was because of these unusual facts that petitioner did not question in the appellate courts of Tennessee that the prosecution of the case in St. Louis was inequitable, oppressive and fraudulent.

SUMMARY OF THE ARGUMENT.

I.

Jurisdiction of this court is sought under Section 237 of Judicial Code as amended, on the asserted ground that "a title, right, privilege or immunity" granted by an act of Congress has been denied petitioner.

(Petition for certiorari, p. 6.)

II.

On the other hand, respondent insists that no right or privilege petitioner is entitled to has been denied her. If there has been such denial, it is a right or privilege granted by a statute or law of a state, and not by any act of Congress. If the right or privilege is not conferred by act of Congress, this court has no jurisdiction.

Railroad Company v. Taylor, 210 U. S. 281.

III.

It is the law of both Tennessee and Missouri and was at the time of the enactment of Federal Employers' Liability Act and of the amendment thereto, and is the law generally, that courts of equity may enjoin the prosecution of any suit, whatever may be the nature of the cause of action asserted therein, when the prosecution thereof is inequitable, oppressive or fraudulent.

Illinois Central Railroad Company v. Miles, 174 Tenn. 676.
Railroad Company v. Ragan, 172 Tenn., 593.
American Express Co. v. Fox, 135 Tenn., 489.
State of Missouri Ex Rel v. Nortoni, 331 Mo., 764.
Gole v. Cunningham, 133 U. S., 107.
Simon v. Southern Railroad Co., 236 U. S., 115.
Baltimore & Ohio Railroad Co. v. Kepner, 86 L. Ed., 37.

IV.

The venue, jurisdiction and procedure of a state court is wholly a matter of state law.

Railroad Company v. Taylor, 210 U. S., 281.
Chambers v. B. & O. Railroad Co., 207 U. S., 142.
Mondou v. Railroad Co., 223 U. S., 1.
Walton v. Pryor, 276 Ill., 563.
Reed's Adm'x. v. I. C. R. R. Co., 182 Ky., 455.
Railway v. McGinley, 175 Wis., 565.

V.

In the Federal Employers' Liability Act as amended, there was not "any attempt" by Congress to confer jurisdiction or venue upon state courts "or to control or affect their modes of procedure."

Douglas v. Railroad Co., 279 U. S., 377.
Mondou v. Railroad Co., 223 U. S., 1.
Murnan v. Wabash Railroad Co., 246 N. Y., 244.

Loftus v. Pennsylvania Railroad Co., 107 Ohio St., 352.

Reed's Adm'x. v. Illinois Central Railroad Co., 182 Ky., 455.

Railway v. McGinley, 175 Wis., 565.

Ex Parte Crandall, 52 Fed. (2) 650.

VI.

It has always been well settled law that when Congress creates a right of action under a power or authority conferred upon Congress by the Constitution, a state court enforces such right of action, when competent to do so under its power as prescribed by local laws, *unless in the Act of Congress jurisdiction of state courts is prohibited.*

Railroad Company v. Taylor, 266 U. S., 200.

Grubb v. Public Utilities Commission, 281 U. S., 470.

21 Corpus Juris Secundum, p. 799.

VII.

The only effect of the language in the Act of Congress that jurisdiction shall be "concurrent with that of the courts of the several states" is to negative any idea that Congress intended to prohibit state courts from enforcing the cause of action created by the Act of Congress.

(See authorities under V.)

VIII.

In the present case now before this court, whatever jurisdiction and venue the Circuit Court in St. Louis is possessed of, and whatever privilege of venue petitioner has if any in that state court, *arises from the statutes and laws of the State of Missouri*, and not from or by virtue of the Act of Congress.

McKnett v. St. Louis & San Francisco Railway Co., 292 U. S., 230.

Chambers v. Baltimore & Ohio Railroad Co., 207 U. S., 142.

Railroad Company v. Taylor, 210 U. S., 281.

IX.

The injunction issued in the present case by a court of equity in Tennessee, does not violate the Act of Congress here relied upon by petitioner, because no privilege of venue or jurisdiction *in state courts* is conferred by the Act of Congress; so that if any right or privilege has been denied petitioner, it is not one conferred by any act of Congress.

Douglas v. Railroad Company, 279 U. S., 377.

X.

States may impose reasonable limitations on the venue of state courts in enforcing actions brought under the Federal Employers' Liability Act.

Douglas v. Railroad, 279 U. S., 377.
Loftus v. Pennsylvania Railroad, 107 Ohio State, 352.
Walton v. Pryor, 276 Ill., 563.
Murnan v. Railroad, 246 N. Y., 244.

XI.

The decision of this court in *Baltimore & Ohio Railroad Company v. Kepner*, 86 L. Ed., 37, was grounded and based upon the proposition that the Act of Congress *conferred upon Federal Courts* an enlarged venue; that said venue or jurisdiction having been conferred upon Federal Courts by Congress, no state statute or state court could take the same away or interfere therewith, but that if the venue or privilege of venue so conferred by Congress be unjust the remedy is legislative and not judicial.

In the case at bar, the injunction issued by a court of equity in Tennessee does not interfere with any venue or privilege of venue conferred by the Act of Congress, because the venue or privilege of venue here involved is that provided by the statutes and laws of the State of Missouri.

ARGUMENT.

The jurisdiction of this court is sought under Section 237 of the Judicial Code as amended, on the asserted ground that "a title, right, privilege or immunity" granted by an Act of Congress has been denied petitioner. (Petition for certiorari, p. 6.)

On the other hand, respondent insists that no right or privilege that petitioner is entitled to has been denied her. We further insist that if there has been such a denial, it is a right or privilege granted by a statute or law of the state and not by any act of Congress. And if the right or privilege so denied her is not conferred by an act of Congress, then we submit this court has no jurisdiction.

Our first insistence, therefore, is that the venue, jurisdiction and procedure of a state court is wholly a matter of state law, and that Congress is without power to confer either venue or jurisdiction on a state court.

It is the law of both Tennessee and Missouri and was at the time of the enactment of Federal Employers' Liability Act and of the amendment thereto, and is the law generally, that courts of equity may enjoin the prosecution of any suit, whatever may be the nature of the cause of action asserted, when the prosecution thereof is inequitable, oppressive or fraudulent.

Illinois Central Railroad Company v. Miles, 174 Tenn., 676.
Railroad Company v. Ragan, 172 Tenn., 593.
American Express Co. v. Fox, 135 Tenn., 489.
State of Missouri Ex Rel v. Nortoni, 331 Mo., 764.
Cole v. Cunningham, 133 U. S., 107.

Simon v. Southern Railroad Co., 236 U. S., 115.
Baltimore & Ohio Railroad Co. v. Kepner, 86 L. Ed., 37.

The Supreme Court of Tennessee held in *Illinois Central Railroad Company v. Miles, et al.*, 174 Tenn., 676, when this case was before that court on demurrer, that the facts alleged in the bill justified the injunction.

The Chancellor, at the hearing on the merits after remand, held that the prosecution of the case in the state court in St. Louis would be oppressive and inequitable; and the Court of Appeals, since no appeal was taken from such holding, held that the question was no longer an open one, saying:

> "In the circumstances stated, we are bound to and do accept as correct the conclusion reached by the Chancellor with respect to the oppressive and inequitable effect of the prosecution of the suit sought to be enjoined." (R. p. 124.)

It results that it is an adjudicated fact, not now open to challenge, that the prosecution of the suit in the state court of Missouri would be inequitable and oppressive; and further that the facts of this case warrant the injunction under the holdings of the Tennessee Supreme Court.

Petitioners, therefore, since they did not raise in the state court the question that the facts of this case were not sufficient to justify the injunction, cannot, of course, raise that question for the first time in this court.

Congress Is Without Power To Confer Either Jurisdiction Or Venue Upon State Courts.

That Congress is without power to confer either venue or jurisdiction upon a state court is, we submit, settled law.

In *Railroad Company v. Taylor*, 210 U. S., 281, 285, the court said:

> "Each state may, subject to the restrictions of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which shall be heard in them, and specifically how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders."

In *Chambers v. B. & O. Railroad Co.*, 207 U. S., 142, 148-149, this court said:

> "But, subject to the restrictions of the Federal Constitution, the state may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them. The state policy decides whether and to what extent the state will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions. Different states may have different policies, and the same state may have different policies at different times. But any policy the state may choose to adopt must operate in the same way on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other."

In *McConnell v. Thomson*, 213 Ind., 16, the court announces the same doctrine in these words:

> "Congress cannot create and define jurisdiction of state courts, but can authorize state courts to enforce

a cause of action created by a federal act. Congress cannot confer upon a citizen of Indiana a federal right to prosecute a cause of action arising in Indiana under a federal act in a state court of Missouri; nor can Congress compel a Missouri state court to accept jurisdiction of a suit to enforce such a cause of action. Consequently when an Indiana state court enjoins a litigant within its jurisdiction from prosecuting a suit in a court of another state it is not restraining the litigant from the exercise of a federal right nor interfering with the exercise of a duty which is enjoined by federal law upon the foreign court."

In *Murnan v. Wabash Railroad Co.*, 246 N. Y., 244, 248, the court said:

"The courts of New York exercise their discretion in all other cases where a tort action is brought by one nonresident against another under the laws of another state. The practice may be anomalous; but it is well established. That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the federal Employers' Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

Ex Parte Crandall, 52 Fed. (2d), 650, 654, 654-655, is directly in point. There the District Court was discussing the power of a state court to enjoin the prosecution

of a suit brought in a state court under the Federal Employers' Liability Act. The Court said:

> "Accepting as I must the construction of the act placed on it in the Douglas case, it is apparent that there is a difference, so far as claimant's right to select her forum is concerned, between the jurisdiction of the federal court and the jurisdiction of the state court. 'There is nothing in the Act of Congress that purports to force a duty upon such courts as against an otherwise valid excuse.' Congress could not, and did not, enlarge the jurisdiction of the state courts. The jurisdiction of the state court is defined by the state which creates it. The most that Congress could do was to permit a state court to enforce the cause of action created by the federal act. Not being permitted to create a juridiction of the state court, it is needless to add that Congress did not and could not, restrict the jurisdiction of a state court."

Further said the court:

> "When the act was passed, state courts of general jurisdiction entertained suits to enforce liability arising out of the negligent operation of railroads engaged in interstate, as well as intrastate, commerce. The litigants in those courts, however, were subject to the control of courts of equity having jurisdiction of the person. It follows, therefore, that Congress, not having created nor restricted the jurisdiction of the state court over causes of action such as the one here under consideration, did not, and could not, deal with the power of one state court to enjoin, upon a proper showing, actions brought by and against citizens within its jurisdiction in the state courts of a sister state. Such are the holdings of Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N. W. 218; Walton v. Pryor, 276 Ill. 563, 115 N. E. 2, L. R. A. 1918E, 914; Reed's Adm'x v. I. C. R. R. Co., 182 Ky. 455, 206 S. W. 798; Cleveland, C., C. & St. L. Ry. Co. v. Shelly (Ind. App.) 170 N. E. 328."

When this case reached the Circuit Court of Appeals for the Seventh Circuit, that court said:

> "The general right of Indiana citizens to begin actions of this nature, wherever service of process on the defendant could be had, was always potentially qualified by the jurisdiction of equity to restrain the citizen from commencing the action in a foreign jurisdiction where to do so would unreasonably, inequitably, and unfairly harass, oppress, or defraud the defendant.
>
> "The Federal Employers' Liability Act does not assume to remove this qualification, and in our judgment does not exempt the citizen from invocation against him of this equitable jurisdiction under facts which would in general justify its application." *Ex Parte Crandall*, 53 Fed. (2d), 969, 971.

The text writers announce the same doctrine.

> "All the powers of any court must be derived from the government which created it and must be limited by the instruments creating them * * * The courts of a state derive their jurisdiction from the Constitution and laws of the state and do not derive any power from the laws of the United States. Congress cannot confer jurisdiction upon a state court or any other court which it has not ordained and established."
>
> 14 *American Jurisprudence*, p. 365, (Courts, Sec. 162).

Roberts Federal Liability of Carriers, Vol. 2, p. 1856, Sec. 962, lays down the rule as follows:

> "It seems clear that no federal right is denied by a decision of a state court granting an injunction restraining parties subject to its jurisdiction, from prosecuting in the courts of another state an action under the Federal Employers Liability Act upon the ground that the prosecution of such action would

work an unconscionable hardship upon the defendant. The right of a party, resident or non-resident, to institute an action under the liability act in a state court springs, not from the liability act, or any other federal statutory or constitutional provision, but from the constitutional and statutory provisions of the state which establishes the court and defines its powers. Hence, where a state court, exercising its inherent authority to prevent persons within its equitable jurisdiction from employing the process of another court as an instrument of fraud, oppression, etc., enjoins such a person from instituting or maintaining a suit under the liability act in the courts of another state, neither that determination, nor a judgment of the highest court of that state affirming the same, is subject to review in the national Supreme Court upon the ground that a federal right has been denied, although the action which is thus excluded from a court of competent jurisdiction is one based upon a federal statute."

The following cases lay down the same rule, but for the sake of brevity we do not quote therefrom:

Reed's Adm'x. v. Illinois Central Railroad Company, 182 Ky., 455.
State of Missouri, ex rel v. Nortoni, 331 Mo. 764.
Railway Company v. McGinley, 175 Wis., 565.
Railroad Company v. Ball, 126 Kan., 745.
Kern v. Railway Company, 204 Ind., 595.
Railway Company v. Shelby, 96 Ind. App. 273.
Alspaugh v. Railroad Company, 98 Ind. App., 280.
Alford v. Railroad Company, 229 Mo. App., 102.
Railroad Company v. Matzinger, 136 Ohio, 271.
Walton v. Pryor, 276 Ill., 563.

Baltimore & Ohio Railroad Company v. Kepner, 86 L. Ed. 37, (not yet reported in the official reports) presents an entirely different state of facts, and is grounded upon

entirely different principles of law, from those involved here. There, the suit sought to be enjoined was instituted in a Federal Court on which Congress in a field pre-empted by it and in the exercise of a power it possessed had conferred mandatory venue. This court recognized the existence of the power of a state court of equity to enjoin the prosecution of a suit on the ground that the prosecution thereof would be vexatious, inequitable or fraudulent, saying "such power does exist."

The opinion of the court as we understand it, is rested primarily on the proposition that "Section 6 establishes venue for an action in the Federal Courts"; and that since "such venue is a privilege created by federal statute," it results "it is obvious that no state statute could vary the venue and we think equally true that no state court may interfere with the privilege." This court said: "A privilege of venue granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense." And further: "If it is deemed unjust the remedy is legislative."

The fundamental reasoning of the opinion, we submit, is that the suit was instituted in a Federal Court upon which Congress had conferred venue; that the privilege of venue existed by virtue of an act of Congress. Venue having been so conferred, the well established equitable jurisdiction to enjoin the prosecution of the suit on equitable grounds has no application, since only Congress could take away or interfere with the venue thus conferred upon Federal Courts.

Since the court specifically recognized this equitable jurisdiction, but held it did not apply in the Kepner case

solely because the Federal Court had venue and petitioner had the privilege thereof by virtue of the Act of Congress, the implication is clear that the equitable jurisdiction would apply if the suit, as here, was instituted in a state court on which Congress had not and could not confer venue or the privilege of venue.

We submit, therefore, in view of the foregoing cases that Congress has not the power to fix or confer venue on a state court. If this be true, then it violates no act of Congress if petitioners have been denied the privilege of venue of the Missouri state court, and this court is, therefore, without jurisdiction of this cause.

Congress in the Federal Employers' Liability Act Did Not Attempt to Regulate Venue of State Courts

Not only is Congress without power to regulate venue of state courts, but the language employed in the Federal Employers' Liability Act clearly demonstrates that Congress, fully recognizing its lack of power, carefully refrained from using language that would indicate it was attempting to fix venue in the state courts.

The *Act*, Title 45, Sec. 56, USCA, is as follows:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

It will be noted from this language that Congress, exercising a power which it possessed, fixed venue *"in a district court of the United States"* at the three designated places. Congress was careful not to use language from which it might appear that it was attempting to fix venue for state courts. The Act does not provide that the courts of the several states shall have concurrent jurisdiction with the courts of the United States, but, on the contrary, it provides that courts of the United States shall have concurrent jurisdiction with the courts of the several states.

Congress, of course, was familiar "with the doctrine often sustained by this court that the state and federal courts have concurrent jurisidiction of suits of a civil nature arising under the Constitution and laws of the United States, save in exceptional instances where the jurisdiction has been restricted by Congress to the federal courts." *Grubb v. Public Utilities Commission*, 281 U. S., 470, 476. And "where exclusive jurisdiction has not been expressly or impliedly granted to the federal court, state courts have concurrent jurisidiction to enforce such rights providing they are fixed by the state constitution and statutes to take jurisdiction." 21 *Corpus Juris Secondum*, p. 798.

It is manifest, we think, that Congress had in mind that when by the Act it vested venue in the federal courts at the three designated places, this language standing alone might be construed as denying its permission to state courts to enforce the Act; and to obviate that implication Congress provided that the courts of the United States should have concurrent jurisdiction with the courts

of the several states, thus manifesting its intention not to deny to state courts the right to enforce the Act.

It is, accordingly, well settled by the decisions of the various courts that in the Federal Employers' Liability Act as amended, there was not any attempt by Congress to confer jurisidiction or venue upon state courts, or "to control or affect their modes of procedure."

In *Douglas v. Railroad Company*, 279 U. S., 377, 387-388, this court said:

> "As to the grant of jurisidiction in the Employers' Liability Act, that statute does not purport to require state courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. It may very well be that if the supreme court of New York were given no discretion, being otherwise competent, it would be subject to a duty. But there is nothing in the act of Congress that purports to force a duty upon such courts as against an otherwise valid excuse."

And in *Mondou v. Railroad Company*, 223 U. S., 1, 56. 56-57, this court in speaking of the language of the Act, says:

> "The amendment, as appears by its language, instead of granting jurisdiction to the state courts, presupposes that they already possessed it."

Further said the court:

> "Because of some general observations in the opinion of the supreme court of errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it

well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts, or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion, and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress, and susceptible of adjudication according to the prevailing rules of procedure."

In the case of *Chambers v. Baltimore & O. R. Co.*, 207 U. S. 142, 52 L. ed. 143, 28 Sup. Ct. Rep. 34, a suit had been brought in Ohio by a widow, who was a citizen of Pennsylvania, to recover damages for the death in Pennsylvania, of her husband, who was also a citizen of Pennsylvania and was a locomotive engineer in the employ of the defendant. The Ohio statute limited the right of recovery, in the courts of Ohio, to damages for the death of a citizen of Ohio. The supreme court of Ohio held that an action for a death occurring in another state was only authorized where the deceased was a citizen of Ohio, and the Supreme Court of the United States sustained the decision, and held that, subject to the restrictions of the Federal Constitution, a state may determine the limit of the jurisdiction of its courts and the character of the controversies which shall be heard in them, and that the policy of the state determines whether, and to what extent, it will entertain in its courts transitory actions where the causes of action have arisen in other jurisdictions.

In *Ex Parte Crandall*, 52 Fed. (2d), 650, 654-655, an opinion by Circuit Judge Evans, the court said:

" 'There is nothing in the Act of Congress that purports to force a duty upon such Courts as against an

> otherwise valid excuse.' Congress could not, and did not, enlarge the jurisdiction of the state courts. The jurisdiction of the state court is defined by the state which creates it. The most that Congress could do was to permit a state court to enforce the cause of action created by the federal act. Not being permitted to create a jurisdiction of the state court, it is needless to add that Congress did not and could not, restrict the jurisdiction of a state court. * * * It follows, therefore, that Congress, not having created nor restricted the jurisdiction of the state court over causes of action such as the one here under consideration, did not, and could not, deal with the power of one state court to enjoin, upon a proper showing, actions brought by and against citizens within its jurisdiction in the state courts of a sister state."

The same doctrine is anounced in the following cases:

Murnan v. Wabash Railroad Co., 246 N. Y., 244.
Reed's Adm'x. v. Ilinois Central Railroad Co., 182 Ky., 455.
Railway Company v. McGinley, 175 Wis., 565.
Loftus v. Pennsylvania Railroad Co., 107 Ohio State, 352.

We submit, therefore, that the langage of the Act itself clearly shows that Congress did not attempt to confer or regulate venue of state courts, and that this court, as well as all other courts so far as we are advised, has so construed the language of the Act.

It results, therefore, that if the Act does not confer venue on state courts for the reason (1) that Congress was wholly without power to do so, and (2) the language of the Act does not have this effect, it is manifest that if any right or privilege has been denied petitioner, it is

only a right or privilege of venue of a state court prescribed by the laws of that state, and that no right or privilege conferred by any act of Congress has been denied her. It necessarily follows, we submit, therefore, this court is without jurisdiction.

States May Impose Reasonable Limitations On The Venue Of State Courts In Enforcing Actions Brought Under The Federal Employers' Liability Act.

That the laws of the state may validly place limitations and restrictions on the venue of state courts in the enforcement of actions brought under the Federal Employers' Liability Act, is, we submit, settled by the decisions of this court and many other courts.

In *Douglas v. Railroad Company*, 279 U. S., 377, the facts were that plaintiff, a citizen and resident of Connecticut, brought a suit in a state court of New York under the Federal Employers' Liability Act to recover damages against the defendant, a Connecticut corporation, for injuries received by him.

There was a statute in New York which, as construed by the courts of New York, gave the state courts of that state the right in their discretion to dismiss a suit brought by a resident of another state. This court, after pointing out that "there are manifest reasons for preferring residents in access to often overcrowded courts, both in convenience and in the fact that, broadly speaking, it is they who pay for maintaining the courts concerned," held that the action of the trial court in declining to take jurisdic-

tion pursuant to this New York statute was correct, saying:

> "As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require state courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. It may very well be that if the supreme court of New York were given no discretion, being otherwise competent, it would be subject to a duty. But there is nothing in the act of Congress that purports to force a duty upon such courts as against an otherwise valid excuse."
>
> (Op. pp. 387-388.)

We submit that if the overcrowded condition of the docket of the court was a valid excuse for refusal to take jurisdiction as held in the Douglas case, then certainly the prosecution of an inequitable and unconscionable suit constituted a valid excuse for the Tennessee court to issue the injunction in this case.

In *Loftus v. Pennsylvania Railroad Co.*, 107 Ohio State, 352, the plaintiff was a resident of Pennsylvania, was injured in Pennsylvania and brought his suit under the Employers' Liability Act in a state court of Ohio against the Pennsylvania Railroad Company, a corporation organized under the laws of the State of Pennsylvania. There was a statute in Ohio fixing the venue of a state court in Ohio, which "limits its venue to the county of the plaintiff's residence at the time of injury or the county where the injury occurred if the road or line or any part thereof be located in such county." This is *Section 11273 of the statutes of Ohio.*

The question presented to the court is thus stated by it:

> "The next question for determination is whether section 11273, General Code, applies to causes of action arising under the Federal Employers' Liability Act (U. S. Comp. St. secs. 8657-8665), and whether the provisions of that act relating to jurisdiction make it compulsory upon the courts of general jurisdiction in this state to hear such causes even though such suits may be begun in a county where the plaintiff does not reside or where the cause of action did not arise."
>
> (Op. p. 359.)

After noting that while "it is very clear that the legislature of Ohio could confer compulsory jurisdiction upon the trial courts to hear all such cases regardless of the residence of the plaintiff or the locality of the injury, it does not follow that the federal lawmaking power can thus confer compulsory jurisdiction; neither does it appear in the language above quoted that it has attempted to do so," the court then said:

> "Inasmuch as it is claimed by plaintiff in error that compulsory jurisdiction is conferred by the language above qouted upon the trial courts of general jurisdiction throughout the states, and that the case therefore turns upon the interpretation of the language of a federal statute, we should have deference to the decisions of the Supreme Court of the United States to determine the intent of Congress in the enactment of that law. In Second Employers' Liability Cases, 223 U. S. 1, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N.S.) 44, the court discussed this provision. At page 56 of 223 U. S., at page 178 of 32 Sup. Ct. (56 L. Ed. 327, 38 L. R. A. [N.S.] 44), of the opinion, after quoting the language of the act relating to jurisdiction, the court made the following observation:

" 'The amendment, as appears by its language, instead of granting jurisdiction to the state courts, presupposes that they already possessed it.

" 'Because of some general observations in the opinion of the Supreme Court of Errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jursidiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure.'

"This language is so pertinent to the inquiry and is so conclusive of the question as to preclude the necessity of further discussion. Upon this branch of the inquiry, therefore, it must be declared that the courts of Ohio are not bound to entertain causes arising under the Federal Employers' Liability Act, unless within the terms of the amendment of section 11273, General Code."

(Op. pp. 361-362.)

In *Walton v. Pryor*, 276 Ill., 563, (Writ of Error dismissed, 245 U. S. 675) Adah B. Walton, administratrix of the estate of her deceased husband, James R. Walton, brought suit in the state court of Illinois against the Receivers of the Wabash Railroad Company under the Federal Employers' Liability Act to recover for the death of her intestate. James R. Walton was a resident of Missouri, where he received injuries from which he died. The statute of Illinois denies to the state

court jurisdiction where the death occurred outside the state, and the question presented was whether this was a valid limitation on plaintiff's right to maintain this suit in the state court of Illinois.

After noting that the jurisdiction of the state courts of Illinois is determined by the constitution and laws of that state, which venue and jurisdiction the Act of Congress could not and did not affect (citing *Railroad Company v. Taylor*, 210 U. S., 281; *Chambers v. B&O Railroad*, 207 U. S., 142; and *Second Employers' Liability Cases; Mondou v. Railroad Company*, 223 U. S. 1), the court said:

> "There is a clear distinction, however, between creating a cause of action and providing for its enforcement, which must be in a court having jurisdiction to hear and determine whether the cause of action has arisen. The legal right comes into existence by the enactment of the law, but the remedy is provided by the establishment of courts, and bestowing upon them jurisdiction. The question here is not whether there was a liability, but what court had jurisdiction to enforce it, and, so far as the Federal Constitution is concerned, the court was bound to give only such remedy as it gave its own citizens upon similar rights."
>
> (Op. p 569.)

The court held the statute was a valid limitation on the venue of its courts, concluding its opinion in these words:

> "It will therefore be seen that the statute of the state provides for an action identical in every particular with the cause of action of which the circuit court assumed jurisdiction, but denies to the court the exercise of such jurisdiction where the death occurs outside of the state. The difference is only that the liability in one case is created by the act of Con-

gress, and in the other by the laws of the state. If the jurisdiction of the state court can be maintained, a cause of action can be enforced in this state simply because the employer and employee, at the time of an injury, are engaged in interstate commerce, while no right of action is given, even to a citizen of this state, for a death caused by the negligence of a corporation in another state, not so engaged. It has been made clear that the circuit court could not exercise jurisdiction, on the ground that the cause of action is founded on the Federal law, unless the laws of the state permit the maintenance of the action. Neither does it appear to us that sec. 12 of article 6 of the Constitution, giving to circuit courts original jurisdiction in all cases in law and equity, can be construed to confer jurisdiction of a cause of action created by Federal law, when jurisdiction of a like cause of action under the state laws is denied to a citizen of the state. The general assembly has expressly declared that there shall be no jurisdiction of an action for damages, occasioned by a death occurring in another state in consequence of wrongful act, neglect, or default, and the cause of action in this case is not to be distinguished, in nature or substantial elements, from the cause of action which the courts are prohibited from entertaining. The Supreme Court of the United States has said that there has been no attempt of Congress to enlarge the jurisdiction of the state courts, but only to require its exercise consistently with local laws, and the enforcement of liability for damages occasioned by a death outside of the state is not consistent with such laws.

"We conclude that the circuit court of Macon county had no jurisdiction, and the judgment is reversed."

(Op. pp. 570-571.)

It is true that a state may not refuse to permit its courts to enforce actions brought under the Employers' Liability

Act solely because the right of action sought to be enforced is created by an act of Congress; that is to say, upon the sole ground that the source of the right of action is an act of Congress.

Mondou v. Railroad Company, 223 U. S. 1.
McKnett v. St. Louis & S. F. Railway Co., 292 U. S. 230.

In *McKnett v. Railway Company*, supra, the action was brought under the Federal Employers' Liability Act in the state court of Alabama to recover damages for an injury suffered in an accident that occurred in Tennessee, of which state McKnett was a resident. The defendant railroad company was a foreign corporation doing business in Alabama. The state appellate court held that the state courts of Alabama had no jurisdiction to enforce a right of action under the Employer's Liability Act, so holding upon the sole ground that it was a right of action under a federal law, and that the Alabama statute by its plain terms limited jurisdiction of the Alabama courts to suits arising under "statues of another state," and that "it could not be extended by construction to include causes of action arising in such other states under a federal law."

This court held that while recognizing "the power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them," yet a state court could not refuse to enforce a right of action granted by the laws of Congress solely because of the source of the law, saying:

> "The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced. The plaintiff is cast out because he is suing

to enforce a federal act. A state may not discriminate against rights arising under federal laws."

(Op. p. 234)

This court further said:

"The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution. The privileges and immunities clause requires a state to accord to citizens of other states substantially the same right of access to its courts as it accords to its own citizens. Corfield v. Coryell, 4 Wash. C. C. 371, 381, Fed. Cas. No. 3,230. Compare Canadian Northern R. Co. v. Eggen, 252 U. S. 553, 64 L. ed. 713, 40 S. Ct. 402. The full faith and credit clause requires a state court to take jurisdiction of an action to enforce a judgment recovered in another state, although it might have refused to entertain a suit on the original cause of action as obnoxious to its public policy."

(Op. p. 233)

And in *Murnan v. Wabash Railroad Company*, 246 N. Y. 244, the court said:

"We conclude that a litigant who brings his action under the Federal Employer's Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

(Op. p. 248)

In *Mondou v. Railroad Company*, 223 U. S. 1, the Supreme Court of Connecticut had held that its courts may refuse to entertain a right of action brought under the

Federal Employers' Liability Act upon the ground that (a) the policy manifested by the act is not in accord with the policy of the state respecting liability of employers to employees for injuries received by the latter while in the service of the former, and (b) it will be inconvenient and confusing for the same court in dealing with cases of the same general class to apply in some the standards of right established by the congressional act, and in others the different standards recognized by the laws of the state.

The record, therefore, presented a case in which the State of Connecticut refused to permit its courts to entertain any action under the Employers' Liability Act upon the sole ground that it was not in harmony with state law, and would be inconvenient. The court held that the State of Connecticut could not refuse to enforce the act upon that ground alone, and said:

> "The suggestion that the act of Congress is not in harmony with the policy of the state, and therefore that the courts of the state are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the states, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the state."
>
> (Op. p. 57)

The court concluded its opinion in these words:

> "We conclude that rights arising under the act in question may be enforced, as of right, in the courts

> of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion."
>
> (Op. p. 59)

As said by the court in *Murnan v. Wabash Railroad Company*, 246 N. Y., 244, with reference to the above case:

> "The case is authority for the bare proposition that, where the state courts would exercise their jurisdiction except for the fact that the action is brought under the act of Congress, they may not refuse to exercise jurisdiction because the action is brought under the laws of the United States."
>
> (Op. p. 247)

We submit it cannot be said or even claimed that the injunction in the present case was issued by the Tennessee court of equity solely because the cause of action arose under the Federal Employers' Liability Act. On the contrary, without regard to the source of the cause of action, the injunction was issued because the prosecution of the cause of action in the state court of Missouri would be oppressive, inequitable and unconscionable.

It seems to us obvious that the prevention of oppression, hardship or fraudulent conduct is "a valid excuse" for the issuance of the injunction in this case. As already shown by the decisions of the courts of Tennessee, Missouri, this court, and so far as we are advised, by the courts of every state, this equitable principle has been so considered whatever may be the basis of the asserted cause of action—whether on note, breach of contract, or tort—and we see no cogent reason why it should not be so considered in suits involving the Federal Employers' Liability Act.

We submit it should be held to be a valid excuse if relieving a congested docket is a valid excuse (Douglas v. Railroad Company, 279 U. S., 377); it should be held to be a valid excuse if a statute limiting venue to the place of residence of plaintiff is a valid excuse (Loftus v. Pennsylvania Railroad Company, 107 Ohio St., 352); it should be held to be a valid excuse if the statute of Illinois limiting venue of its state court to deaths occurring within the state is a valid excuse (Walton v. Pryor, 276 Ill., 563; Writ of Error dismissed, 245 U. S. 675).

If New York may validly deny to citizens of Tennessee the privilege of venue of her court solely to prevent the dockets of her courts from becoming congested, we know of no sound reason why Tennessee may not deny to those very same citizens the privilege of venue of the courts of New York or Missouri to prevent fraud or oppression.

CONCLUSION

Briefly to summarize, we may categorically state that this record discloses the exercise by Tennessee courts of an unquestioned judicial control over citizens of Tennessee to prohibit their unconscionable selection of an oppressive and fraudulent venue for the prosecution of their suit. Upon facts both undisputed and foreclosed, the decisions of the Tennessee appellate courts are sound in legal principal and rest upon fundamental justice. These decisions in no way impugn the act of the Congress upon which suit is based, nor do they deny any right, privilege or immunity created by Congress.

There is here no element whatever of collision between state courts or unseemly conflict of jurisdictions; nor any

suspicion of denial of due process of law in the proceedings of the Tennessee courts. Assuredly, there is no imperiled individual right or remedy to be preserved nor jurisdictional dignity of the court of any sister state to be vindicated.

As the foundation for solution of the question presented in this record, there clearly appears from the Federal Employers' Liability Act itself, its legislative history and the construction placed upon it by this court, the inescapable implication that Congress has not attempted so to regulate venue in state courts as to confer upon petitioners any such right, privilege or immunity as is asserted. This honorable court has repeatedly pointed out that Congress has no power to define, enlarge or limit the jurisdiction or venue of state courts; and it necessarily follows that Congress could not and has not created the "privilege or immunity" upon which petitioners seek to invoke the jurisdiction of this court.

This court has made it plain that the action of state courts in declining or prohibiting venue in a particular suit of this kind in a state court is circumscribed by two federal constitution guaranties, which are: (1) That with respect to venue the Federal Employers' Liability Act shall be treated in the same manner as state acts of the same class are treated, (2) and that citizens of all the states shall be treated alike.

No fact or intendment in the present record reflects the slightest non-compliance with those conditions.

We respectfully insist that, for the reasons hereinabove

set out, the decisions of the Tennessee appellate courts in this case are both sound and just; and that this honorable court has no duty or right of supervision or review.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

MRS. JESSIE MILES, et al.,
Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent.

No. 272

PETITION FOR REHEARING

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No. 272

PETITION FOR REHEARING

Now comes the above named Illinois Central Railroad Company and presents this, its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

In the majority opinion herein, the Court says:

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the federal privilege of litigating a federal right in the court of another state."
>
> (p. 5.)

The above is the recognition of the right of a state either by legislative enactment or by judicial decision to

regulate the use of its courts. The holding in *Douglas vs. Railroad Co.*, 279 U. S. 377 and *Chambers vs. Railroad Co.*, 207 U. S. 142 to the same effect is thereby approved.

The State of Missouri, by its judicial decision, in *State of Missouri, ex rel. vs. Nortoni*, 331 Mo. 764, has declared that no right exists in any suitor to use her courts where to do so would be "inequitable, unfair and unjust." In short, the right to use the Courts of Missouri to perpetrate a fraud or an injustice does not exist. Such a right is not possessed by a citizen of Tennessee, a citizen of Missouri, or a citizen of any other state. Such a limitation is valid under the holding of the majority opinion in this case, and under the holding in the Chambers and the Douglas cases.

In this case, it has been determined by a Court possessing jurisdiction of the subject matter and of the parties that the prosecution of this case in Missouri Courts would be "oppressive and inequitable." (Record, p. 118.) This is an adjudication that this case comes within the limitation placed by Missouri on the venue of its Courts.

If Missouri, without violating any federal right or federal privilege which the petitioners have, can place this limitation on the venue of its courts and can validly enforce same, then we submit it follows that Tennessee Courts can enforce this very same valid Missouri limitation without denying to petitioner any federal right or federal privilege. To hold otherwise is to hold that the *existence* of the federal right or federal privilege is determined by ascertaining the Court that enforces the limitation. Tennessee has done no more than enforce a

valid limitation which Missouri itself has placed on its own Courts.

II.

Tennessee has held that a citizen of Tennessee has not the right to use the Courts of the land to perpetrate a fraud. *American Express Co. vs. Fox*, 135 Tenn. 489; *Miles vs. Railroad Co.*, 174 Tenn. 676. So has this Court. *Cole vs. Cunningham*, 133 U. S. 107. So has Missouri in the *Nortoni* case. It results, therefore, that in the case at bar, Tennessee has only denied to the petitioners the right to attempt to exercise in a Missouri Court a privilege which under Missouri law the petitioners do not possess.

If the petitioners did not have the right to go into the Courts of Missouri—did not have the privilege of venue—for the reasons above stated, the prohibiting of any attempt to assert a right or privilege not possessed could not be a denial of a federal right. The right was neither a federal right nor a state right. It simply did not exist.

None of the facts in this case are contested or in any manner challenged. Petitioners throughout this litigation, in the Chancery Court, in the two Tennessee Appellate Courts (see opinion of Tennessee Court of Appeals, Record, pp. 122, 123), or in this Court, by assignment of error or otherwise, have never contested the facts; their only contention is and always has been that on these unchallenged and judicially determined facts the injunction should not issue solely and alone because of the Federal Employers' Liability Act.

The sole question submitted to this Court by petitioners for decision is whether or not the Federal Em-

ployers' Liability Act prevents the issuance of the injunction which otherwise it is conceded should issue. That was the only question presented to and decided by the Courts of Tennessee. In effect, petitioners' position is that they admit the existence of the limitation placed by Missouri on its Courts to the effect that her Courts cannot be used to perpetrate a fraud, but they say that this limitation is made void by the Act.

In *Chambers vs. B. & O. RR Co.*, 207 U. S. 142, the facts are that Chambers was a resident of Pennsylvania where he was killed in an accident. His widow, also a resident of Pennsylvania, brought suit in the state Court of Ohio under the Federal Employers' Liability Act to recover for the wrongful death. The defendant defended on the ground that she did not have the right to prosecute the case in the state Court because a statute of Ohio limited that right to residents of the state of Ohio. This Court held that limitation to be valid and, therefore, held that the plaintiff did not have the right to prosecute the case in the state Court of Ohio.

Now let us assume that those parties lived in Tennessee and that the defendant, instead of interposing the defense in the state Court of Ohio where the suit was pending, elected to file a bill in the Court of equity of Tennessee to enjoin the prosecution of that suit on the ground that plaintiff did not have the right under the Ohio law to prosecute her suit. And suppose it was proved and adjudicated that the widow as well as deceased were non-residents of the state of Ohio and residents of Tennessee, that the accident occurred in Tennessee, that these facts were not disputed, and that the injunction was accordingly issued; could it be maintained that be-

cause the Tennessee Court enjoined her from attempting to enforce a right which she did not possess she was thereby wrongfully deprived of a federal right or a federal privilege? Manifestly not. She was deprived of no right or privilege, federal or otherwise. The Court merely adjudged that she did not possess the right, federal or otherwise.

So here, Tennessee courts have not deprived these petitioners of any right or privilege, federal or otherwise. The Tennessee Courts have merely adjudged upon undisputed facts that they did not have the right or privilege, federal or otherwise, to maintain this suit in Missouri where to do so would perpetrate a fraud on defendant.

Plainly, we think, a suitor has no federal right or federal privilege to have Missouri determine if his conduct is oppressive, inequitable or fraudulent. The most he can claim, if he can claim so much, is that his conduct must be determined by the law of Missouri. But it is not unusual for the Courts of one state to determine rights according to the law of another state. That is always done where, for example, the Courts of one state construe a contract made in another state, or where a suit is brought in one state to recover for a personal injury received in another. In this connection, however, we again say petitioners have always admitted the facts and have always conceded the injunction should have issued unless prohibited by the Federal Employers' Liability Act.

III.

It is difficult to believe Congress intended by the lang-

uage employed in the Federal Employers' Liability Act to do that which the majority opinion holds was its intention. It is axiomatic that statutes modifying common-law rules must be strictly construed. That same canon of construction should be here applied, as the Federal Employers' Liability Act was passed to do that very thing. Even if Congress has the right to "load the dice," that intention should not be presumed in the absence of more explicit declaration of intent, especially in view of the former holdings of this Court and the use by Congress of words which, had they not been used, the self-same state Courts would have had jurisdiction of the self-same cases.

If, as is said in the above quotation from the majority opinion, a state by "judicial decision" can "regulate the use of its courts generally," it follows the state has the right "by judicial decision" to determine that "normal expense and inconvenience of trial in permitted places" are "oppressive, inequitable and fraudulent" and by virtue thereof can deny suitors the right under such circumstances to use its courts even if those courts are in "permitted places."

Congress cannot *impose* jurisdiction on state courts where there is no discrimination indulged against suitors living outside the state involved. As long as the state courts are open indiscriminately under the same rule, as far as venue and jurisdiction are concerned, to all applying for relief, there is no federal question involved and the Supreme Court of necessity has no right, nor has Congress the right, to say that the state Courts *must* entertain this or that proceeding.

The majority opinion recognizes that this is true in that it uses the word "permission" in referring to the position Congress has taken with reference to suits being brought in state Courts under the Federal Employers' Liability Act. In the majority opinion it is said:

> "The *permission* granted by Congress to sue in state courts may be exercised only where the carrier is found doing business."

With all due respect to the Court, while this is correct, it does not go far enough, as demonstrated by the use by the Court in the majority opinion of the following language:

> "As Congress has permitted both the state and federal suits, *its determination* that the carriers *must* bear the incidental burden is a *determination* that the state Courts may not treat the normal expense and inconvenience of trial in *permitted places*, such as the one selected here, as inequitable and unconscionable."

This holding turns *"permission"* into *"determination"* and deprives the states of controlling their own Courts "by judicial decision." It is true the Court in the majority opinion says:

> "This is not to say that states cannot control their courts."

With all due respect to the Court, we do not see, since the Court has changed *"permission"* into *"determination,"* why it is not interfering with states controlling their courts.

IV.

We submit with great respect that the holding in the majority opinion, with respect to the right of state Courts to issue such an injunction as here involved, stands alone and is contrary to the decisions of every other Court. We realize that this statement is broad and all-inclusive. We make it after an exhaustive research and after considering what we believe to be every reported decision on the subject. The majority opinion cites the following federal cases as being in accord with the majority opinion: *Connelly vs. Central R. Co. of N. J.*, 238 Fed. 923; *Schendel vs. McGee*, 300 Fed. 273, 278; *Chesapeake & Ohio Ry. Co. vs. Vigor*, 90 Fed. (2d) 7. With the greatest deference, we submit that these cases do not so hold.

The *Connelly case*, we submit, did not involve a suit brought in a state Court and did not involve an injunction of any kind. In that case the suit was instituted in the *Federal Court* and the opinion is by the District Judge thereof. The opinion was written in response to "a motion to set aside the service of the summons in each of these cases on the ground that this Court has not jurisdiction of the person of the defendant." The Court said: "The *sole question*, therefore, is whether at the time the actions were commenced defendant was doing business in the Southern District of New York within the meaning of the act." The Court held defendant was so doing business, and the motion to set aside service was denied.

In *Schendel vs. McGee*, supra, the action under the Federal Employers' Liability Act was instituted in the *United States District Court* of Minnesota, and in the course of the proceedings the District Judge refused to

try the case and entered an order retiring the cause from the calendar and "striking the same from the docket." The suit was not dismissed, however. A mandamus was thereupon sought by an original action in the Circuit Court of Appeals for the Eighth Circuit to require the District Judge to try the case. And the opinion of the Court of Appeals was upon the question whether or not petitioners were entitled to the mandamus. It is, therefore, manifest that the question decided in that case could not be here involved.

In *Chesapeake & Ohio RR. Co. vs. Vigor*, supra, the suit sought to be enjoined was instituted in the *United States District Court* for the Northern District of Indiana. That fact alone is sufficient to show that the principles there involved came within the Kepner case and not within this case. In addition, the Court recognized the plaintiff's right to enjoin the suit even though it was brought in the Federal Court, but held that the facts did not justify the exercise of the power.

In the majority opinion in the present case, the Court also cites the decisions of the following state courts which it is said deny the authority to issue injunctions such as the one here involved: *Missouri-Kan.-Tex. R. Co. vs. Ball*, 126 Kan. 745, 272 Pac. 313; *Mo. & Ohio R. Co. vs. Parrent*, 260 Ill. App. 284; *Lancaster vs. Dunn*, 153 La. 15, 95 So. 385. We submit with great respect that none of these cases sustains the proposition to which they are cited.

In each of these cases the Court recognized the power of the Court to grant the injunction, but merely held that the facts did not warrant the exercise of that power.

In *Mo.-Kan.-Tex. RR. Co. vs. Ball*, supra, the Court said that "an action may, of course, be instituted to enjoin parties from prosecuting actions in another, in our own, or a foreign state, where the purpose of a party is to do an inequitable thing, something contrary to good conscious, and to enjoin them from doing acts which will oppress and work wrong and injury to others." The Court, however, further said: "It will be noted that *there was no finding of fraud or oppression* on the part of the defendant in the bringing of the action in Missouri." The Court followed its holding in Bank Saving Life Insurance Co. vs. Wood, 122 Kan. 831 and held "that the convenience of the parties is not a sufficient reason for an injunction."

In *M. & O. RR. Co. vs. Parrent*, supra, the Court likewise held that the facts were not sufficient to warrant the exercise of the power, but the Court recognized the power of the Court to enjoin, saying:

> "In the Prentiss case, supra (Illinois Life Ins. Co. vs. Prentiss, 277 Ill. 383), it was held that it is only where it clearly appears that the bringing of a suit in a foreign state will result in a fraud, gross wrong or oppression that a Court of equity will interfere with the general right of a person to begin his suit in any jurisdiction he sees fit and restrain him from the presentation of such suit."

So in *Lancaster vs. Dunn*, supra, the Court denied the injunction because the facts did not warrant its issuance. The Court said:

> "The doctrine seems to be well established now by the decisions of the Courts of other states that a court of equity has authority to prevent a person within the court's jurisdiction from prosecuting a

> suit in a court having jurisdiction in another state whenever the purpose or object of the suit complained of is merely to harass and annoy the defendant therein or to accomplish something unconscionable or inequitable or not obtainable in the court of the complaint."

We submit, therefore, with great respect, that none of these cases supports the principles announced in the majority opinion.

On the other hand, in our original brief in this case, beginning at page 14 thereof, there is cited a formidable array of cases decided by some of the ablest courts in the land, in each of which the precise question was decided exactly contrary to the holding of the majority opinion.

We know of no case since the decision in the Kepner case that has been decided in the light of that opinion. We do not, therefore, know what the Courts (before the opinion in the present case) would have held to be the effect of the Kepner opinion on the right to enjoin suits brought in state Courts under the Federal Employers' Liability Act. Their probable holding, however, is indicated in the annotation to the Kepner case found in 136 A. L. R. 1232, 1234, where it is plainly indicated that notwithstanding the Kepner case, state Courts still possess the right to grant injunctions against the prosecution of cases brought in the Courts of other states under the Act.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the

judgment of the Court of Appeals of Tennessee be, upon further consideration, affirmed.

MARION G. EVANS,
THOS. A. EVANS,
LARRY CRESON,
Attorneys for Illinois
Central Railroad Company.

CLINTON H. McKAY,
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Of Counsel.

CERTIFICATE OF COUNSEL

We, MARION G. EVANS, THOS. A. EVANS and LARRY CRESON, counsel for the above named Illinois Central Railroad Company, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.

MARION G. EVANS,
THOS. A. EVANS,
LARRY CRESON,
Counsel for Illinois
Central Railroad Company.

I, WILLIAM G. CAVETT, counsel for Mrs. Jessie Miles, et al., hereby acknowledge receipt of two copies of the foregoing petition for rehearing.

This 17th day of April, 1942.

WILLIAM G. CAVETT,
Counsel for Mrs. Jessie Miles, et al.

p. 2. of {Jackson}.

SUPREME COURT OF THE UNITED STATES.

No. 272.—October Term, 1941.

Mrs. Jesse Miles, et al., Petitioners, vs. Illinois Central Railroad Company. } On Writ of Certiorari to the Court of Appeals of the State of Tennessee.

[March 30, 1942.]

Mr. Justice Reed delivered the opinion of the Court.

The effect of section 6 of the Federal Employers' Liability Act[1] on the power of a state court to enjoin its citizens, on the ground of oppressiveness and inequity to the defendant carrier, from suing on a F. E. L. A. claim in the state courts of another state, furthering such a suit in any manner, or receiving the proceeds of any judgment so obtained, is before us for decision.

The respondent, an Illinois corporation, hereafter referred to as the Illinois Central, brought an original bill in the Chancery Court of Shelby County, Tennessee, seeking to enjoin one of the petitioners here, Mrs. Miles, then the Tennessee administratrix of her husband, a resident of that State, from further prosecuting in a Missouri state court her F. E. L. A. claim against the Illinois Central for the death of her husband, its employee. The fatal accident had occurred at Memphis, Tennessee. After a temporary injunction issued, Mrs. Miles promptly dismissed her Missouri suit and was discharged as administratrix by the Tennessee probate court. A Missouri administrator was then appointed at her suggestion, and he instituted another Missouri suit for the same cause of action. The Illinois Central filed an

[1] 36 Stat. 291. "Sec. 6. That no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued.

"Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States, and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States." 45 U. S. C. § 56.

amended and supplemental bill, adding decedent's children, likewise residents of Tennessee, as defendants, and enlarging its prayer to forbid furthering the new suit in any manner or receiving the proceeds of any judgment. A new temporary injunction was issued as prayed.

The grounds for the injunction were the inconvenience and expense to the Illinois Central of taking its Memphis employees to St. Louis and the resulting burden upon interstate commerce. The anticipated extra expense was several hundred dollars per day for an estimated two days of actual trial and whatever additional time might be lost by continuances or delay. Inconvenience was expected through the withdrawal of some twelve to twenty employees and officials from their duties for the same period. The defense relied upon a timely plea that section 6 of the F. E. L. A. prevented the enjoining of proceedings in the Missouri courts.

The trial court found that the continued prosecution of the pending Missouri case would be "oppressive and inequitable" to the Illinois Central and "a burden on the commerce and business of the complainant." As a matter of law the court concluded, however, that the Illinois Central was not entitled to permanent injunctions. On appeal the Court of Appeals reversed the decree and made the temporary injunctions permanent. Further state review by certiorari in the Supreme Court of Tennessee was refused, and we granted certiorari to the Court of Appeals to settle an important federal question[2] as to the applicability of section 6 of the F. E. L. A. to this situation. — U. S. —. Cf. *Payne* v. *Knapp*, 197 Iowa 737, 198 N. W. 62; *Peterson* v. *C. B. & Q. R. Co.*, 187 Minn. 228, 244 N. W. 823; *B. & O. Rd. Co.* v. *Kepner*, 137 Ohio 409, 30 N. E. 2d 982, affirmed 314 U. S. 44.

The *Kepner* case dealt with the power of a state court to enjoin a resident from continued prosecution of a suit under the F. E. L. A. in a distant federal district court on the ground of inequity, vexatiousness and harassment. The decision denied the power to interfere with the privileges of federal venue "for the benefit of the carrier or the national transportation system."

[2] Judicial Code § 237(b). Southern Ry. Co. v. Painter, 314 U. S. 155, 159-60: "If a state court proceeds as the Chancery Court of Tennessee acted, the ultimate vindication of any federal right lies with this Court." Baltimore & Ohio R. Co. v. Kepner, 314 U. S. 44, 52.

As in the *Kepner* case, there is in this case no occasion to go into the question of the availability as support for an injunction of a charge of interference with insterstate commerce by reason of the burden of expense and inconvenience. The trial court found a burden on the commerce of the Illinois Central but made no finding as to any burden on interstate commerce. Moreover, the Court of Appeals stated that the Illinois Central "expressly abandoned the contention" "that the prosecution of the suit in St. Louis was a burden on interstate commerce." No contention is made here that there is any such burden or that the Illinois Central is not doing substantial business in Missouri, as found by the trial court. It operates daily passenger trains with its own crews into St. Louis over the St. Louis Terminal Company tracks, maintains passenger and freight offices and had total receipts in St. Louis of a million and a half the year the suit was filed. Under the rule announced in *Denver & R. G. W. R. Co.* v. *Terte*, 284 U. S. 284, 287, the Illinois Central is properly suable in Missouri. In the *Kepner* case, 314 U. S. 44, 51, we pointed out, with a discussion of the applicable cases, that the carrier must submit to inconvenience and expense, if there is jurisdiction, "although thereby interstate commerce is incidentally burdened." There is no occasion to repeat the comments here. The specific declaration in section 6 that the United States courts should have concurrent jurisdiction with those of the several states and the prohibition against removal point clearly to the conclusion that Congress has exercised its authority over interstate commerce to the extent of permitting suits in state courts, despite the incidental burden, where process may be obtained on a defendant, not merely soliciting business but actually carrying on railroading by operating trains and maintaining traffic offices within the territory of the court's jurisdiction.[3]

The real point of controversy here is whether that portion of section 6 of the F. E. L. A., which holds litigation in the state

[3] Hoffman v. Missouri *ex rel.* Foraker, 274 U. S. 21. Cf. Int. Milling Co. v. Columbia Co., 292 U. S. 511, limiting Davis v. Farmers Co-operative Co., 262 U. S. 312; Atchison Ry. Co. v. Wells, 265 U. S. 101, and Michigan Central R. Co. v. Mix, 278 U. S. 492, to the rule that suits upon extra-state causes of action under F. E. L. A. burden commerce and will not be permitted in courts of states where the defendant carriers do no more than maintain facilities for solicitation of business. The three cases last mentioned and the Foraker case were all written by the same justice within the space of a few years.

court where it is instituted, prevents the court of another state from enjoining citizens, within its jurisdiction, from continued prosecution of the suit on grounds of inequity. Here, as in Kepner's case, there is no question but what the Missouri court has venue of the proceeding. Here, too, we need to look no farther into Tennessee law than the opinion of the state's highest court in this record to conclude that under state law a court of equity may enjoin a resident citizen from attempting to enforce his rights, oppressively and inequitably,[4] and that the expense and inconvenience hereinbefore set out resulted in oppressiveness and inconvenience in the eye of the state court.

In the legislative history of section 6,[5] the provision that removal may not be had from a "state court of competent jurisdiction" was added to the House bill on the floor of the Senate and later accepted by the House, in order to assure a hearing to the employee in a state court. Words were simultaneously adopted recognizing the jurisdiction of the state courts by providing that the federal jurisdiction should be concurrent. The venue of state court suits was left to the practice of the forum. The opportunity to present causes of action arising under the F. E. L. A. in the state courts came, however, not from the state law but from the federal. By virtue of the Constitution, the courts of the several states must remain open to such litigants on the same basis that they are open to litigants with causes of action springing from a different source. This is so because the Federal Constitution makes the laws of the United States the

[4] Cf. Chambers v. Baltimore & Ohio R. R., 207 U. S. 142, 149.

[5] House Resolution 17263, 61st Congress, 2d Session, which eventually became the Act of 1910, contained no prohibition or restriction upon removal of suits from state courts when it passed the House, and was reported to the Senate by the Senate Committee on the Judiciary. Sen. Rep. No. 432, 61st Cong., 2d Sess., March 22, 1910. Upon the floor of the Senate several amendments were proposed, varying in terms, but all seeking to achieve some such limitation. 45 Cong. Rec. 3995, 3998, 4051. Senator Paynter's second version was the amendment eventually adopted. 45 Cong. Rec. 4093. The House concurred in the Senate amendment without modification. 45 Cong. Rec. 4159.

The reason for the amendment was stated by Senator Paynter thus:

"I offer an amendment which will give to the plaintiff the right to select the forum in which his case shall be tried. He can select the federal or the state court, as he may prefer, to try his case arising under the act in question." P. 4051.

"If this amendment is adopted, the Congress has not conferred by the act under consideration the exclusive jurisdiction upon state courts. The plaintiff can choose either the federal or state court in which to prosecute his action. The effect of my amendment is to prevent the removal of the action from the state courts when brought there." P. 4093.

supreme law of the land, binding on every citizen and every court and enforceable wherever jurisdiction is adequate for the purpose. *Second Employers' Liability Cases*, 223 U. S. 1, 56-59. The Missouri court here involved must permit this litigation. To deny citizens from other states, suitors under F. E. L. A., access to its courts would, if it permitted access to its own citizens, violate the Privileges and Immunities Clause. Constitution, Art. IV, § 2; *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233.[6] Since the existence of the cause of action and the privilege of vindicating rights under the F. E. L. A. in state courts spring from federal law, the right to sue in state courts of proper venue where their jurisdiction is adequate is of the same quality as the right to sue in federal courts. It is no more subject to interference by state action than was the federal venue in the *Kepner* case.

This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the federal privilege of litigating a federal right in the court of another state.

State courts have assumed the right to enjoin their citizens from proceeding in the courts of other states. This was done, for example, in *Reed's Admrx.* v. *Illinois Central R. Co.*, 182 Ky. 455, 206 S. W. 794. The basis of the decision was the inequity of allowing a suit at a distant point in a state or federal court, page 464.[7] *Reed's* case was relied upon by *Kern* v. *Cleveland, C. C. & St. L. Ry.*, 204 Ind. 595, 185 N. E. 446, for the authority of a state court to enjoin its citizens from inequitable

[6] Chambers v. Baltimore & Ohio, 207 U. S. 142, or Douglas v. New Haven R. Co., 279 U. S. 377, do not impinge upon this principle. In the former case an Ohio statute forbade suits in its courts for wrongful death occurring in another state unless the decedent was a citizen of Ohio. This Court saw no discrimination against personal representatives of any decedent since their right to sue did not depend upon their citizenship but upon the citizenship of their decedent. In the latter case a statute of New York, which gave only discretionary jurisdiction to suits by non-residents but compulsory jurisdiction to suits by residents was held valid because it treated citizens and non-citizens alike and tested their right to maintain an action by their residence or nonresidence.

[7] This is not the position of the federal courts. Connelly v. Central R. Co. of New Jersey, 238 F. 932; Schendel v. McGee, 300 F. 273, 278; Chesapeake & Ohio Ry. Co. v. Vigor, 90 F. 2d 7.

conduct under the F. E. L. A. Other state courts deny their authority to issue such injunctions.[8]

The permission granted by Congress to sue in state courts may be exercised only where the carrier is found doing business. If suits in federal district courts at those points do not unduly burden interstate commerce, suits in similarly located state courts cannot be burdensome. As Congress has permitted both the state and federal suits, its determination that the carriers must bear the incidental burden is a determination that the state courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable.

The judgment below is reversed and the cause is remanded to the Court of Appeals of Tennessee for further proceedings not inconsistent with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[8] Missouri-Kansas-Texas R. Co. *v.* Ball, 126 Kan. 745, 271 Pac. 313; Mobile & Ohio R. Co. *v.* Parrent, 260 Ill. App. 284; Lancaster *v.* Dunn, 153 La. 15, 95 So. 385.

SUPREME COURT OF THE UNITED STATES.

No. 272.—October Term, 1941.

Mrs. Jesse Miles, et al., Petitioners,
vs.
Illinois Central Railroad Company.
} On Writ of Certiorari to the Court of Appeals of the State of Tennessee.

[March 30, 1942.]

Mr. Justice Jackson, concurring.

I agree with the conclusion and, with exceptions stated herein, with the opinion of Mr. Justice Reed, though I am not able to sublimate the conflict that underlies this case to the level of either of the conflicting opinions. Realistically considered, the issue is earthy and unprincipled. So viewed, the real issue is whether a plaintiff with a cause of action under the Federal Employers' Liability Act may go shopping for a judge or a jury believed to be more favorable than he would find in his home forum. An advantage which it is hoped will be reflected in a judgment is what makes plaintiffs leave home and incur burdens of expense and inconvenience that would be regarded as oppressive if forced upon them. And that is what makes railroads seek injunctions such as this one.

The judiciary has never favored this sort of shopping for a forum. It has sought to protect its own good fame as well as to protect defendants by injunctions against the practice of seeking out soft spots in the judicial system in which to bring particular kinds of litigation. But the judges with lawyerly indirection have not avowed the interest of the judiciary in orderly resort to the courts as a basis for their decision, and have cast their protective doctrines in terms of sheltering defendants against vexatious and harassing suits. This judicial treatment of the subject of venue leads Congress and the parties to think of the choice of a forum as a private matter between litigants and in cases like the present obscures the public interest in venue practices behind a rather fantastic fiction that a widow is harassing the Illinois Central Railroad. If Congress had left us free to consult the ulti-

mate public interest in orderly resort to the judicial system I should agree with Mr. Justice FRANKFURTER's conclusion. But the plaintiffs say that they go shopping, not by leave of the courts themselves, but by the authority of Congress. Whether the Congress has granted such latitude is our question.

Unless there is some hidden meaning in the language Congress has employed, the injured workman or his surviving dependents may choose from the entire territory served by the railroad any place in which to sue, and in which to choose either a federal or a state court of which to ask his remedy. There is nothing which requires a plaintiff to whom such a choice is given to exercise it in a self-denying or large-hearted manner. There is nothing to restrain use of that privilege as all choices of tribunal are commonly used by all plaintiffs to get away from judges who are considered to be unsympathetic and to get before those who are considered more favorable; to get away from juries thought to be small-minded in the matter of verdicts and to get to those thought to be generous; to escape courts whose procedures are burdensome to the plaintiff and to seek out courts whose procedures make the going easy.

That such a privilege puts a burden on interstate commerce may well be admitted, but Congress has the power to burden. The Federal Employers' Liability Act itself leaves interstate commerce under the burden of a medieval system of compensating the injured railroad worker or his survivors. He is not given a remedy, but only a lawsuit. It is well understood that in most cases he will be unable to pursue that except by splitting his speculative prospects with a lawyer. The functioning of this backward system of dealing with industrial accidents in interstate commerce burdens it with perhaps two dollars of judgment for every dollar that actually reaches those who have been damaged, and it leaves the burden of many injuries to be borne by them utterly uncompensated. Such being the major burden under which the workmen and the industry must function, I see no reason to believe that Congress could not have intended the relatively minor additional burden to interstate commerce from loading the dice a little in favor of the workman in the matter of venue. It seems more probable that Congress intended to give the disadvantaged workman some leverage in the choice of venue than that it intended to leave him in a position where the railroad could force him to try one

lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere. This latter would be a frequent result if we upheld the contention made in this case and in the *Kepner* case. I think, therefore, that the petitioner had a right to resort to the Missouri court under the circumstances of this case for her remedy.

I do not, however, agree with the statement in Mr. Justice REED'S opinion that "the Missouri court here involved must permit this litigation." It is very doubtful if any requirement can be spelled out of the Federal Constitution that a state must furnish a forum for a nonresident plaintiff and a foreign corporation to fight out issues imported from another state where the cause of action arose. It seems unnecessary to decide now whether this litigation could be imposed on the Missouri court, for it appears to have embraced the litigation. Even if Missouri, by reason of its control of its own courts might refuse to open them to such a case, it does not follow that another state may close Missouri's courts to one with a federal cause of action. If Missouri elects to entertain the case, the courts of no other state can obstruct or prevent its exercise of jurisdiction as conferred by the federal statute or its right to obtain evidence and to distribute the proceeds, if any, in accordance with the Federal Employers' Liability Act. I therefore favor reversal.

SUPREME COURT OF THE UNITED STATES.

No. 272.—October Term, 1941.

Mrs. Jesse Miles, et al., Petitioners,
vs.
Illinois Central Railroad Company.

On Writ of Certiorari to the Court of Appeals of the State of Tennessee.

[March 30, 1942.]

Mr. Justice Frankfurter, dissenting.

The decision in this case mutilates principles that have long been regarded as basic in the law. Few legal doctrines have been more universally accepted than those recognizing the powers which this Court now denies to the states when suits under the Federal Employers' Liability Act are brought in state courts: the power of a court to prevent injustice by restraining a person subject to its authority from maintaining an inequitable suit in the courts of another state, *Cole* v. *Cunningham*, 133 U. S. 107; the right of a court to decline its facilities to a suit that "in the interest of justice" should be tried elsewhere, *Canada Malting Co.* v. *Paterson Co.*, 285 U. S. 413, 422-23. The decision disregards the constitutional relationship between the "judicial power" of the federal government and that of the states whereby state courts enforce federal rights (when such remedies have not been exclusively entrusted to the federal courts) as part of their "duty to safeguard and enforce the right of every citizen without reference to the particular exercise of governmental power from which the right may have arisen". *Minneapolis & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, 222.

For a decision so far-reaching in its implications, warrant is found in the inarticulate radiations of Section 6 of the 1910 amendment to the Federal Employers' Liability Act. While the words of a statute do not by themselves distil its meaning, we must at least begin with them. The language of Section 6 is simple and direct. After establishing a two-year period of limitations, it continues: "Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant,

or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States, and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States." 36 Stat. 291.

This is a conventional provision. There is nothing novel or distinctive about it. Recognition of concurrent jurisdiction in the state courts to vindicate federal rights is found in the first Judiciary Act of 1789. 1 Stat. 73, 77. And the statute books are replete with instances in which Congress has acknowledged the existence of this jurisdiction in the state courts unless explicitly withheld from them. See the discussion of Mr. Justice Bradley in *Claflin* v. *Houseman*, 93 U. S. 130, 139-43. The essence of Section 6 is merely that the state courts are open to a plaintiff suing under the Act, and that if he chooses to bring suit in a state court, the defendant may not remove the cause to a federal court. So far as language conveys ideas, the Act affords no intimation that Congress intended anything more.

We are not of course concerned here, as we were in the *Kepner* case decided the other day, 314 U. S. 44, with an attempt by a state court to prevent resort to a federal court. Historically, the problem of interferences, direct or indirect, between federal and state courts is entirely separate from the problem of the relations of the state courts to each other. See Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345. The question now before us—relating to the power of a state to enjoin those subject to its jurisdiction from unjustly resorting to the courts of a sister state—is an aspect of the latter problem. In the *Kepner* case this Court held only that the provision of Section 6 "filled the entire field of venue in the federal courts" and that what had thus been legislatively given to the federal courts could not judicially be taken away. The *Kepner* decision cast no cloud upon *Douglas* v. *New Haven R. Co.*, 279 U. S. 377, which sustained the power of a state to apply the principle of *forum non conveniens* to suits under the Act brought in its courts by non-residents. The issue in the case at bar is essentially another phase of the problem in the *Douglas* case—whether, merely by authorizing access to the state courts to enforce rights created by the Federal Employers' Liability Act, Congress impliedly repealed *pro tanto* the means for achieving

justice which the states customarily employ in similar cases. Specifically, the question for decision is this: Has Congress, by providing explicitly that state courts shall have concurrent jurisdiction of suits under the Act, withdrawn from each state its recognized power to enjoin persons within its jurisdiction from bringing a suit under the Act "contrary to equity and good conscience" in the courts of another state? This question was wholly outside the scope of the *Kepner* case. It was not presented, and was therefore not decided, by that case.

The relevant circumstances here are these. A resident of Tennessee was killed in a railroad accident occurring in Tennessee. The railroad, an Illinois corporation, has its principal offices in Tennessee. All of the witnesses reside in Tennessee, as do the deceased's legal representatives. But suit was brought in a state court of Missouri, where the railroad does some business. Finding that the Missouri suit was "oppressive and inequitable", the Tennessee Court of Appeals sustained the power of the chancellor to restrain the further prosecution of that suit. The finding that the Missouri suit was "oppressive and inequitable" was challenged by the petitioners neither before us nor in the courts of Tennessee, and the propriety of the action taken by the Tennessee court, as a matter of equitable discretion, is not here in issue. We are called upon to decide only whether Congress has deprived Tennessee of the power which it has asserted in this case.

It is admitted that the courts of Tennessee customarily exercise this power in situations like the present case. See *American Express Co.* v. *Fox*, 135 Tenn. 489. If the accident here had occurred while the deceased was engaged in intrastate commerce and consequently had not given rise to a right of action under the federal statute, Tennessee would unquestionably have had the power to do what she has done here. For while the Privileges and Immunities Clause, Art. IV, § 2, secures to citizens of other states such right of access to the courts of a state as that state gives to its own citizens, *Chambers* v. *Baltimore & Ohio R. R.*, 207 U. S. 142, 148; *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233, it does not take away from a state its historic power to prevent unjust resort to the courts of another state. *Cole* v. *Cunningham*, 133 U. S. 107. Moreover, the Constitution would not prevent Missouri from declining to entertain a suit to vindicate a federal right, such as was brought here, if an action to enforce a similar non-federal right would also not lie in her courts. The availability of state

courts for the enforcement of federal rights has not resulted in putting federal rights on any different footing from state rights. "A state may not discriminate against rights arising under federal law", *McKnett* v. *St. Louis & S. F. Ry. Co., supra,* at 234, but neither the Constitution nor Congress has compelled the states to discriminate in favor of federal rights. And this Court has expressly held that the rights created by the Federal Employers' Liability Act are not different, in this respect, from other federal rights. "As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned." *Douglas* v. *New Haven R. Co., supra,* at 387.

The utilization of state courts for the vindication of federal rights does not require that their established procedures be remodelled or that their customary modes for administering justice be restricted. "And it was of course presumably an appreciation of the principles so thoroughly settled which caused Congress in the enactment of the Employers' Liability Act to clearly contemplate the existence of a concurrent power and duty of both Federal and state courts to administer the rights conferred by the statute in accordance with the modes of procedure prevailing in such courts." *Minneapolis & St. Louis R. R.* v. *Bombolis,* 241 U. S. 211, 218; and see *Second Employers' Liability Cases,* 223 U. S. 1, 56. The mere fact that a federal right is the basis of suit cannot therefore deprive the state courts of the power to use their customary procedures for the achievement of justice. In simply taking advantage of the facilities afforded by the courts of the states, Congress cannot be deemed to have altered the settled jurisprudence of the states so as to operate more favorably for federal rights than for similar rights created by the states themselves. Such drastic inroads upon the authority of the states should be made only upon clear Congressional mandate.

The Court finds such a plain command in the Act because Congress has explicitly provided in Section 6 that the jurisdiction of the state courts "shall be concurrent" with that of the federal courts. But Congress thereby merely spelt out what has always been unquestioned constitutional doctrine. "It is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive. Upon the state courts, equally with the courts of the Union, rests the obligation to guard

and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them." *United States* v. *Bank of New York Co.*, 296 U. S. 463, 479; see *Claflin* v. *Houseman*, 93 U. S. 130, 136-37; *Robb* v. *Connolly*, 111 U. S. 624, 635-37. And in *Grubb* v. *Public Utilities Commission*, 281 U. S. 470, 476, the Court reaffirmed the doctrine that "the state and federal courts have concurrent jurisdiction of suits of a civil nature arising under the Constitution and laws of the United States, save in exceptional instances where the jurisdiction has been restricted by Congress to the federal courts". The source of these formulations is Hamilton's classic statement in No. 82 of the Federalist (sesquicentennial ed., p. 536):

"I hold that the State courts will be divested of no part of their primitive jurisdiction, further than may relate to an appeal; and I am even of opinion that in every case in which they were not expressly excluded by the future acts of the national legislature, they will of course take cognizance of the causes to which those acts may give birth. This I infer from the nature of judiciary power, and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. . . . . When in addition to this we consider the State governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive, that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited."

Therefore, if Congress had been silent with respect to the jurisdiction of state courts of suits arising under the Act, the state courts would still have had such jurisdiction. If it be suggested that by articulating what would otherwise have been implied, Congress must have had some purpose, some interest of emphasis, it would be enough to say that such punctiliousness, and perhaps redundancy, of phrasing is not uncommon in procedural legislation. But, in any event, the legislative history of the 1910 amendment conclusively shows that Congress did not insert this provision in order to cut down the normal powers of state courts. The concurrent jurisdiction of the state courts was explicitly defined in order to dissipate an unwarranted doubt as to the right and duty of state courts to entertain suits arising under the Act. Con-

gress wanted to avoid an implication of denial to the state courts of power to entertain cases under the Act, and not to create an implication of denial to the state courts of their traditional powers in dealing with such cases.

The Act of 1908 contained no provision specifically dealing with venue. 35 Stat. 65. On January 7, 1910, Representative Sterling introduced a bill, H. R. 17263, that eventually became the 1910 amendment to the Act. The bill had this provision: "This Act shall not be construed as excluding the exercise of a concurrent jurisdiction of cases arising under the Act by the courts of the several States." The House Committee on the Judiciary reporting on the bill explained its purpose:

"It is proposed to further amend the act by making the jurisdiction of the courts of the United States 'concurrent with the courts of the several States.'

"This is proposed in order that there shall be no excuse for courts of the States to follow in the error of Hoxie v. N. Y., N. H. & H. R. R. Co. (73 Atlantic Rep., 754) in which the court declined jurisdiction upon the ground, inter alia, that Congress did not intend that jurisdiction of cases arising under the act should be assumed by state courts.

"It is clear under the decisions of the Supreme Court of the United States, that this conclusion of the Connecticut court is erroneous. And the reasons recited by the Connecticut court lead to an opposite conclusion from that which the opinion declares upon the subject. But no harm can come, and much injustice and wrong to suitors may be prevented by an express declaration that there is no intent on the part of Congress to confine remedial actions brought under the employers' liability act to the courts of the United States." H. Rep. No. 513, 61st Cong., 2d Sess., p. 7.

The Committee also recommended that the wording of the provision be changed to read as follows: "The jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several States". This language was embodied in the Act.

When the bill came to the floor of the House, Representative Sterling, who was in charge of the measure, underscored the sole reason for the provision:

"The second change in the law provides that the federal courts and the state courts shall have concurrent jurisdiction. I am very sure that they have concurrent jurisdiction as the law is now, but on account of a decision of one of the state courts of Connecticut, where one judge declined to take jurisdiction in a case because it was under a federal statute, the committee thought best to ex-

pressly provide in the law that the federal courts and the state courts should have concurrent jurisdiction to avoid the possibility of such a construction in the future." 45 Cong. Rec. 2253.

In reply to a question as to the Committee's purpose in recommending this provision, "Did you intend to limit the state courts in any way in this matter?", the answer was, "Oh, no; just the contrary." 45 Cong. Rec. 2254.

With these authoritative explanations the bill was passed by the House on February 23, 1910. 45 Cong. Rec. 2260. It was then sent to the Senate and there referred to its Judiciary Committee. The report of that Committee repeated *in haec verba* the explanation of the provision made by the House Committee. See Sen. Rep. No. 432, 61st Cong., 2d Sess., p. 5. Senator Borah, who steered the bill in the Senate, said:

"The amendment which has been proposed in the latter portion of section 6 was necessitated, if that term can properly be used, by reason of a decision of the supreme court of the State of Connecticut. My individual view is that the law is now as the amendment attempts to make it—that is to say, that both the federal and state courts have jurisdiction of this matter—concurrent jurisdiction. . . . As I understand the law, unless there is a clause prohibiting or inhibiting the state court it always has concurrent jurisdiction with the federal courts in such a subject-matter as this. The report cites a number of authorities to this effect. But the supreme court of Connecticut refused to assume jurisdiction or to take jurisdiction of the matter, though the well-established legal principle seems to be absolutely different. I do not believe this amendment is necessary. I believe it is thoroughly established that the federal courts and the state courts have concurrent jurisdiction. But, in order to avoid courts being misled upon this proposition this specific provision is thought to be necessary in the law." 45 Cong. Rec. 3995. See also his remarks at 45 Cong. Rec. 4034-35.

The Court appears to draw comfort from the provision of the Act prohibiting removal of a suit from a state court of competent jurisdiction to a federal court. The bill as passed by the House contained no such provision. It was offered as an amendment on the floor of the Senate by Senator Paynter who, in proposing the amendment, made a few remarks that are unenlightening for present purposes. The amendment was approved by the Senate without further discussion. 45 Cong. Rec. 4093. When the bill came back to the House, Representative Clayton, a member of the House Judiciary Committee, explained the purpose of this amendment:

"The real amendment [made by the Senate] and the one that I think is a distinct improvement of the bill, certainly more so

than the other two, is to add . . . these words: 'And no case arising under this act and brought in any state court of competent jurisdiction shall be removed to any court of the United States.' And the gentleman, being, as I am, a states-rights Democrat, will certainly say that is a decided improvement upon the bill as it originally passed the House. Furthermore, I say that this amendment will tend to relieve the federal courts of some litigation which can be as well, if not better, determined in the courts of the States." 45 Cong. Rec. 4158.

Such a restriction against removal of litigation normally arising in the state courts is not unique in the history of legislation dealing with the business of the lower federal courts. Thirty years earlier Congress had begun to limit the right of removal to the federal courts. See, e. g., Act of July 12, 1882, § 4, 22 Stat. 162, 163; Act of March 3, 1887, 24 Stat. 552, corrected by Act of August 13, 1888, 25 Stat. 433. The removal prohibition of the 1910 Act must be regarded as a phase of the movement to ease the pressure upon the lower federal courts by curtailing access to them rather than by multiplying unduly the number of federal judges. Nothing warrants the inference that thereby Congress intended a reversal of the historic relation of state courts to one another.

That no expression of Congress, nor the purposes revealed by it outside of the language it employed, calls for a break with the past in giving effect to the 1910 amendment was the conclusion reached by this Court upon the fullest consideration of the significance of the provision. "The amendment, as appears by its language," it was held in the *Second Employers' Liability Cases*, 223 U. S. 1, 56, "instead of granting jurisdiction to the state courts, presupposes that they already possessed it." Later, in the *Douglas* case, the Court noted that the amendment "does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned." 279 U. S. at 387. And again in *McKnett's* case, 292 U. S. at 233, the Court emphasized that "Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act". In short, every time the question has arisen this Court has recognized that by the 1910 amendment Congress did not write a new chapter in judicial history nor did it modify the historic function of state courts as agencies for the enforcement of federal rights employing the same instruments for achieving justice as they employ when enforcing rights having their source in state law.

The Court now holds that, where considerations of equity and justice are otherwise compelling, Section 6 has deprived the state courts of the power to enjoin a plaintiff from pursuing a suit against a carrier in the courts of any state in which the carrier does business. But a series of decisions following *Davis* v. *Farmers Cooperative Co.*, 262 U. S. 312, enforces a contrary proposition. In these cases, notably *Denver & R. G. W. R. Co.* v. *Terte*, 284 U. S. 284, and *Michigan Central R. Co.* v. *Mix*, 278 U. S. 492, suits against a carrier in a state where it did business were nevertheless found to constitute an unjustifiable burden on commerce and therefore could not be maintained. If Congress had conferred obligatory jurisdiction upon the state courts, it would have been entirely beyond the province of this Court to hold, as it did in these decisions, that a suit in a state court which was given "concurrent jurisdiction" by the 1910 amendment constituted a burden on commerce. To suggest that the grant of "concurrent jurisdiction" repealed the historic powers of equity sanctioned by *Cole* v. *Cunningham*, 133 U. S. 107, is to imply that in all these cases the Court disregarded what is now found to be the right of a plaintiff to resort to a state court, unhampered by the authority of the state courts to invoke their familiar equitable powers to restrain oppressive and vexations suits in other state courts. This is to say that in all these cases over a period of years this Court disregarded the jurisdictional requirements of the Federal Employers' Liability Act. Yet the Act was constantly before the Court, and, it may not be amiss to recall, no member of this Court, in modern times at least, was more familiar with and more mindful of jurisdictional requirements than Mr. Justice Brandeis, who spoke for a unanimous Court in both the *Davis* and *Mix* cases.

The Court does not now overrule these decisions. They stand as unchallenged authorities that in giving the state courts concurrent jurisdiction of suits under the Act Congress did not thereby preclude the application of principles of equity and justice to such suits. These decisions show clearly that Section 6 did not give the state courts compulsive jurisdiction; it merely conferred authority to be administered in the context of existing law.

The power invoked by Tennessee in this case was a familiar head of equity jurisdiction long before the Constitution. Injunctions by the chancellor against suits in other courts go back to at least the late sixteenth century. See *Cliffe* v. *Turnor*, Cary 83 (1579); *Chock* v. *Chea*, Cary 83 (1579); *Tanfield* v. *Davenport*, Tot. 114

(1638); *Trinick v. Bordfield,* Tot. 117 (1638). When Lord Chancellor Clarendon in 1677 refused to enjoin a foreign attachment, *Love* v. *Baker,* Ch. Cas. 67, the reporter noted that "all the bar was of another opinion. It was said, the injunction did not lie for foreign jurisdictions, nor out of the king's dominions. But to that it was answered, the injunction was not to the court, but to the party." The opinion of the bar soon became the accepted law of England. In the leading case of *Lord Portarlington* v. *Soulby,* 3 Myl. & K. 104, Brougham, L. C., expressed the historic doctrine of equity jurisdiction. Referring to the attitude of the bar towards *Love* v. *Baker,* he commented: "A very sound answer, as it appears to me; for the same argument might apply to a Court within this country, which no order of this Court ever affects to bind, our orders being only pointed at the parties to restrain them from proceeding. Accordingly this case of *Love* v. *Baker* has not been recognized or followed in later times." 3 Myl. & K. at 107. See *Wharton* v. *May,* 5 Ves. Jr. 27; *Kennedy* v. *Earl of Casillis,* 2 Swans. 313; *Harrison* v. *Gurney,* 2 Jac. & W. 563; *Bushby* v. *Munday,* 5 Madd. 184; *Beauchamp* v. *Marquis of Huntley,* Jac. 546; Eden on Injunctions (1822 ed.) pp. 3 *et seq.,* 101-02.

This doctrine of equitable power has been universally accepted by American courts. See, e. g., *Dehon* v. *Foster,* 4 Allen 545, 550; *Cole* v. *Young,* 24 Kans. 435, 438; *Bigelow* v. *Old Dominion Co.,* 74 N. J. Eq. 457, 473. And the power has been exercised by the state courts generally to enjoin oppressive suits brought under the Act in other state courts. See *Reed* v. *Illinois Central R. Co.,* 182 Ky. 455; *Chicago, M. & St. P. R. Co.* v. *McGinley,* 175 Wis. 565; *State ex rel. New York, C. & St. L. R. Co.* v. *Nortoni,* 331 Mo. 764; *Kern* v. *Cleveland, C. C. & St. L. R. Co.,* 204 Ind. 595. Of course, since a federal right is involved, no state court can screen denial of or discrimination against a federal right, under the guise of enforcing its local law. *Davis* v. *Wechsler,* 263 U. S. 22; *Southern Ry. Co.* v. *Painter,* 314 U. S. 155, 159-60.

The power of equity to restrain the prosecution of unconscionable suits has been part of the very fabric of the state courts as we have known them in our whole history. And nothing in the Federal Employers' Liability Act, its language, its history, or its policy, warrants a denial of this power to the states.

The CHIEF JUSTICE, MR. JUSTICE ROBERTS and MR. JUSTICE BYRNES join in this dissent.